

Demy 8vo. Half-bound in Calf, 8s.; Net. 6s. In Cloth, 5s.
Post Free.

(Cash must be sent with Order, and net prices are **only** to be obtained
direct from the Office.)



UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

Published by FRANK P. WILSON, at the ESTATES GAZETTE Office, 6, St.
Bride Street, Fleet Street, London, E.C.

*Largest Circulation of any Journal dealing with the
Landed Interests.*

ESTABLISHED 1858.

THE "ESTATES GAZETTE"

A JOURNAL DEVOTED TO

Land, House Property and Agricultural Interests.

Proprietor: FRANK P. WILSON.

OFFICES: 6, ST. BRIDE STREET, FLEET STREET, LONDON.

Published every Saturday, Price **THREEPENCE**,

Annual Subscription, 15s., post free.

Covers for Filing 2s. 6d. each.

This paper has been published for 40 years under the patronage of Auctioneers, Surveyors, Land, House and Estate Agents, Land Owners and Solicitors. Its pages contain special reports of Law Cases, interesting to the profession—such as Commission Cases, Disputed Agency questions, Surveyors' Fees, Compensation Cases and Rating Appeals, and a quantity of general information.

To those in any way connected with Real Property, the *Estates Gazette* will be found invaluable for reference. It is filed at all the principal Hotels, Clubs, Law Societies and Reading Rooms in the Kingdom. It affords an excellent medium for Advertisements of Sales, announcements of Estates, Residences and Farms to be Let; and, indeed, for all notifications concerning Land which require publicity.

An important feature is the accurate list of FORTHCOMING SALES and the RESULTS OF SALES, offering an advantage to Speculators in Real Estate which cannot be obtained elsewhere. Sales by Private Treaty, Historic Estates, Bric-à-brac, Occasional Notes, Legal Topics, Notes by the Way, Personal Paragraphs, Agricultural Notes, Legal Proceedings, and Provincial Property Sales are the headings of some of the principal subjects.

Solicitors and Land and Property Owners extensively support the *Estates Gazette*, and it is recognised by them as an authority on the state of the Property Market. Numbering as it does amongst its subscribers many of the most influential persons interested in Land and House Property, the *Estates Gazette* offers advantages not afforded by any other Journal for making public all matters connected with the landed interest.

THE LAW
OF
LANDLORD & TENANT

BY
SIDNEY WRIGHT, M.A.,

*New College, Oxford, and of the Middle Temple,
Barrister-at-Law.*

AUTHOR OF "THE LAW RELATING TO LANDED ESTATES,"
"THE LAW OF FIXTURES," ETC.

LONDON:

FRANK P. WILSON,
"ESTATES GAZETTE" OFFICE, 6, ST. BRIDE STREET, E.C.
SWEET AND MAXWELL, LTD.,
3, CHANCERY LANE, W.C.

1900.

T

W 9361 L

1900

LONDON:

PRINTED AT THE OFFICE OF THE "ESTATES GAZETTE,"

6, ST. BRIDE STREET, E.C.

334579

9-15-60

OKH

LM 9-22-60

PREFACE.

In this book I have endeavoured to deal with all the main features in the modern law of landlord and tenant. It is not intended in any way to compete with the existing text books, which are written for lawyers, but rather to supply the want which many other persons have long felt of a digest sufficiently detailed to be of practical use. There is much in the standard works which is necessarily of antiquarian or theoretical interest only, and by careful selection it has been found possible to give all that is of substantial present importance within a volume of moderate size.

One of my chief difficulties has been with regard to the citation of authorities. I might have followed the text writers in giving chapter and verse for every statement of the law, or I might have omitted references altogether. The first course is open to the objection that it would have largely increased the bulk of a work not primarily designed for legal readers; while the second would have been unsatisfactory to many who might hesitate to accept what would have been apparently my ipse dixit. I therefore decided, as a general rule, to state what is old well-settled law without reference

to authorities, and to cite modern cases, or such older ones as support propositions which are specially noteworthy, or may be thought curious or doubtful. Again, it seemed convenient to distinguish case law from that which rests upon statute, indicating the latter by the name and section of the particular Act of Parliament.

I hope that, written on these lines, the book may be useful to land and estate agents, surveyors, auctioneers, owners and occupiers of property, and students preparing for the examinations of the Surveyors' Institution and the Auctioneers' Institute; and that it may not be unacceptable to many lawyers.

S. W.

1, Cloisters, Temple.

June, 1900.

TABLE OF CONTENTS,

—:o:—

	PAGE
CHAPTER I.	
LEASES	1
CHAPTER II.	
AGREEMENTS FOR LEASES AND SPECIFIC PER- FORMANCE THEREOF	274
CHAPTER III.	
YEARLY AND OTHER TENANCIES	289
CHAPTER IV.	
SPECIAL KINDS OF TENANCIES	306
CHAPTER V.	
COMPENSATION FOR THE USE AND OCCUPATION OF LAND	312
CHAPTER VI.	
DISTRESS FOR RENT	322
CHAPTER VII.	
THE RELATIVE RIGHTS AND DUTIES OF LANDLORD AND TENANT APART FROM EXPRESS CONTRACT	398
CHAPTER VIII.	
CHANGE OF PARTIES TO THE TENANCY	430
CHAPTER IX.	
UNDERLEASES	469
CHAPTER X.	
OF THE MODES IN WHICH A TENANCY IS DETER- MINED	473

CHAPTER XI.		PAGE
NOTICE TO QUIT	...	509

CHAPTER XII.		
MODE OF RECOVERING POSSESSION OF THE PRE-		
MISES	...	523

CHAPTER XIII.		
RIGHTS AND LIABILITIES OF THE PARTIES ON		
TERMINATION OF THE TENANCY	...	538

CHAPTER XIV.		
PROVISIONS OF THE CRIMINAL LAW RELATING TO		
LANDLORD AND TENANT	...	581

APPENDICES:—

STATUTES	...	585
FORMS	...	643

TABLE OF CASES.

	PAGE
Abinger (Lord) v. Ashton	230
Ahearn v. Bellman	516
Alcock v. Moorhouse	450
Aldin v. Clarke	125
Allum v. Dickinson	155
Allchurch v. Hendon Union	168
Allen, re	169
Allen v. Taylor	77
Alloway v. Steere	457
American Concentrated Must Co. v. Hendry ...	371
Anderson v. Oppenheimer	133
Anderson v. Vicary	80, 417
Andrews v. Hailes	399
Anon, 1 Mod. 180	22
Arding v. Economic, etc., Publishing Co. ...	155
Astbury, ex parte	542
Backhouse v. Bonomi	420
Badcock v. Hunt	158, 177
Bagshaws, Limd., v. Deacon	373
Bailey v. De Crespigny	248
Bangor (Bishop of) v. Parry	47
Barff v. Probyn (note) 246, 553,	560
Barlow v. Teal	512
Barrow v. Isaacs	218, 485, 488
Bastin v. Bidwell	136
Bates v. Donaldson	216
Bayley v. Great Western Railway Co. ...	75
Baylis v. Jiggins	154
Baynes v. Lloyd	116, 118
Baynton v. Morgan	147
Beardman v. Wilson	316
Bennett v. Womack	244
Bensing v. Ramsay... .. (note) 299,	304
Birmingham Brewery Co. v. Jameson ...	243
Birmingham, etc., Banking Co. v. Ross ...	76
Birmingham, etc., Land Co. v. L. and N.W.R. Co	247
Blake v. Woolf	133
Boddington v. Robinson	22
Bonner v. Tottenham, etc., Building Society...	448
Bowen v. Anderson	426, 511
Bowes, re, Strathmore v. Vane	454

	PAGE
Brennan v. Bolton	278
Brett v. Rogers	174
Bridge v. Quick	507
Bright Smith, re	69
Broster, re	389
Bryant v. Hancock	(note) 240
Buckle v. Fredericks	234
Bull, ex parte	362
Burrow v. Scammell	280
Burt v. Gray	501
Bury v. Thompson	516
Caballero v. Henty	432
Cannon Brewery v. Nash	512
Carlisle Cafe Co. v. Muse	69
Carlton v. Bowcock	23
Casey v. Hellyer	526
Chandler v. Bradley	27
Charsley v. Jones	121
Ohawner's Estate, re	27, 97
Cheetham v. Hampson	401, 429
Chipperfield v. Carter	277
Clarke v. Milwall Dock Co.	340
Clayton v. Leach	116, 117, 288
Clegg v. Hands	241, 440
Clemence, ex parte	357
Coatsworth v. Johnson	11, 502
Coleman v. Bathurst	79, 409
Collen v. Wright	38
Connolly v. Connolly	37
Conquest v. Ebbetts	200, 472
Cook v. Guerra	443
Cooper v. Robinson	84
Corbett v. Plowden	150, 513
Cotesworth v. Spokes	487
Cowen v. Truefitt	70
Crabtree v. Robinson	371
Croft v. Lumley	491
Cumming v. Bedborough	159
Daubuz v. Lavington	310
Darby and Co. v. Mitchell	420
Darrell v. Tibbitts	207, 209
Dashwood v. Magniac	404
Davis v. Gyde	145, 146
Davis v. Harris	341
Davis, re	386
Dear v. Verity	279

TABLE OF CASES.

ix

PAGE

De Nicholls v. Saunders	...	...	...	145,	443
Dennett v. Atherton	...	...	...	...	133
D'Eyncourt v. Gregory	...	...	...	542,	543
Direct Spanish Telegraph Co. v. Shepherd	...	...	...	...	177
Doe v. Meux	...	...	...	...	109
Doe v. Galloway	...	...	...	...	69
Doe v. Walters	...	...	...	...	515
Doe v. Watts	...	...	...	...	8
Doe v. Wells	...	...	...	...	483
Doe v. Roberts	...	...	...	...	55
Doherty v. Allmann	...	...	...	...	182
Dougall v. McCarthy	...	...	...	...	292
Duxbury v. Sandiford	...	...	...	...	65
Dymock v. Showell's Brewery Co.	...	...	...	253,	490
Dynevor (Lord) v. Tennant	...	...	...	...	78
Earle v. Maugham	...	...	...	...	158
Eastern Telegraph Co. v. Dent	...	...	...	218,	488
Easton Estate Co. v. Western Waggon Co.	...	...	...	...	344
Ebbetts v. Conquest	...	...	...	200, 202,	472
Ecclesiastical Commissioners v. Merral...	...	...	...	9, 43,	317
Edge v. Boileau	...	...	...	...	133
Edwards v. Fox	...	...	...	...	339
Edwicke v. Hawkes	...	...	...	...	584
Elliott v. Johnson	...	...	...	...	435
Elwes v. Maw	...	...	...	...	546
Emmanuel and Simmons, re	...	...	...	...	265
Empson v. Soden	...	...	...	...	406
Erskine v. Adeane	...	...	...	401,	410
Essex (Lord) v. Capel	...	...	...	...	412
Evans v. Wyatt	...	...	...	...	492
Evans v. Evans	...	...	...	...	317
Farrer v. Nelson	...	...	...	...	410
Fenner v. Blake	...	...	...	...	480
Fenton v. Logan	...	...	...	...	350
Field, re	...	...	...	...	265
Fielden v. Slater	...	...	...	...	236
Finch v. Underwood	...	...	...	...	136
Finlay v. Bristol and Exeter Railway Co.	...	...	...	59,	320
Fisher v. Marsh	...	...	...	...	317
Fitz v. Iles	...	...	...	...	234
Fletcher v. Nokes	...	...	...	...	502
Floyd v. Lyons	...	...	...	...	177
Friary Holroyd and Co. v. Singleton	...	...	...	88, 138, 450,	481
Gardner v. Fooks	...	...	...	...	279
Gardner v. Ingram	...	...	...	...	87
Gandy v. Jubber	...	...	...	...	426

	PAGE
Gas Light and Coke Co. v. Turner	114
Gas Light and Coke Co. v. Hardy	347
General Assurance Co. v. Worsley	517
Gentle v. Faulkner	214, 446, 503
Glegg, ex parte	558
Goreley, ex parte	210
Gosling v. Woolff	434
Gough v. Wood	557
Grace v. Baynton	286
Graham v. Edge	467
Green v. Marsh	309
Greenwood v. Moss	492
Griffin v. Tomkins	494
Grosvenor Hotel Co. v. Hamilton... ..	126
Gundry v. Feltham	411
Hall v. Ewin... ..	237
Hall v. Comfort	526
Hare v. Burgess	135
Hare v. Elms	497
Harris v. James	424, 425
Harris, ex parte	343
Harrison v. Barrow-in-Furness Corporation ...	216
Harrison, Ainslie and Co. v. Lord Muncaster...	132
Hastings (Lord) v. Saddler	399
Hawkins v. Walrond	227
Haywood v. Silber	220
Heawood v. Bone	343
Henderson v. Mears	318
Henderson v. Thorn	197
Herlakendon's case	405
Hobson v. Tulloch	233
Hobson v. Gorringe	557
Hodson v. Henland	278
Hogarth v. Jennings	369
Hogg v. Brooks	481
Holford v. Pritchard	418
Holmes v. Goring	72
Hood v. Challis	333
Horsey Estate, Ltd., v. Stieger 215, 253, (note)	305, 489
Howard v. Fanshawe	497, 498
Howell, re	105
Hindle v. Pollitt	225
Hudson v. Bartram	283
Hugall v. McLean	191, 195
Hughes v. Smallwood	389
Hughes v. Rimmer	165

TABLE OF CASES.

xi

	PAGE
Humphreys v. Cousins	429
Hunt v. Harris	403
Hunter v. Hunt	472
Hyde v. Warden	433, 485
Jarman v. Hale	299
Jeffery v. Stephens	279
Jenkins v. Jackson	134
Johnson v. Edgware, etc., Ry. Co.	88
Johnson v. Wild	472
Jolly v. Arbuthnot	333
Jones v. Shears	315
Jones v. Biernstein	384
Joyner v. Weeks	199
Jump v. Payne	465
Keech v. Sandford	138
Keen v. Priest	349
Keith, Prowse and Co. v. National Telephone Co.	521
Kemble v. Farren	99
Kemp v. Christmas	384
Kendall v. Baker	92
Kerrison v. Smith	7
King v. Eversfield	578
Kinsman v. Jackson	231
Kirkland v. Briancourt	351
Kusel v. Watson	89
Lane v. Cox	423
Leigh v. Dickeson	403
Lemmon v. Webb	422
Lempriere v. Lange	63
Lepla v. Rogers	219
Lewis v. Fothergill	231
Lisburne (E. of) v. Davies	399
Lister v. Lane	187
Lloyd and Tooth, re	570
Lock v. Pearce	503
Logan v. Hall	212, 471
London (City of) v. Nash	280
London (Corporation of) v. Riggs	73
London County Council v. City of London Brewery Co., re (note)	241
London and Westminster Loan Co. v. London and North Western Railway Co.	96
London and Westminster Loan, etc., Co. v. Drake	480
London and Yorkshire Bank v. Belton	352
Long v. Clarke	371

	PAGE
Lonsdale (E. of) v. Nelson	423
Lovelock v. Frankland	270
Lowe v. London and North Western Railway Co.	319
Lumsden v. Burnett	372, 373, 383
Lybbe v. Hart	458
Lyon v. Greenhow	191
Lynes v. Snaith	303
Lyons v. Elliott	340
Mackenzie, re	387
Magdalen Hospital v. Knotts	9, 40, 41, 47
Manchester, Sheffield, etc., Railway v. Anderson	132
Manchester Bonded Warehouse Co. v. Carr...	150, 194
Mander v. Falck	440
Mardell v. Curtis	65, 89
Marshall v. Mackintosh	254
Martin, re	266
Martin v. Green	352
Matthews v. Usher	488, 501, 502
Mayfair Property Co. v. Johnston	420
McGarel, re	262
Metropolitan Railway Co. v. Defries	306
Meux v. Cobley	223
Miller v. Hancock	424
Morgan v. Hardy	199
Morgan v. Jackson	80, 416
Morgan, re	465
Morley v. Carter	571
Morton v. Palmer	343
Mumford v. Collier	310
Mundy v. Jolliffe	278
Municipal Permanent Building Society v. Smith	33, 328
Newbolt v. Bingham	498
New City Constitutional Club Co., re	357
Negus, re	263
Newby v. Eckersley	570
Newson v. Smythies	223
Nind v. Nineteenth Century Building Society	507, 508
Nokes v. Gibbon	508
Norton v. Dashwood	542, 543
North Yorkshire Iron Co., re	358
Nottingham Patent Brick Co. v. Butler	239
Oastler v. Henderson	478
Oceanic Steam Navigation Co. v. Sutherbury ...	34
Page, re	461
Palmer v. Bramley	146, 352
Patman v. Harland	117

TABLE OF CASES.

xiii

	PAGE
Panther Lead Co., re	478
Patten v. Reid	319
Paul v. Somerhays	411, 412
Payne v. Rogers	424
Payne v. Haine	471
Pearson and l'Anson, re	570
Peebles v. Crosthwaite	215
Penton v. Barnett	493, 502
Perry v. Chotzner	187
Phené v. Popplewell	478
Phillips v. Phillips	137
Phillips v. Rees	382
Pollock v. Stacey	316
Pontifex v. Foord	471
Papé v. Westacott	(note) 144
Powley v. Walker	224
Pretty v. Bickmore	424
Proudfoot v. Hart	187, 189
R. v. S. Paul, Covent Garden	256
Rankin v. Lay	223
Ray's Settled Estates, re	57
Reece v. Strousberg	330
Reeve v. Berridge	433
Rex v. Herstmontceaux	295
Rendall v. Andreæ	454
Reynolds v. Moore	80
Roberts v. Holland	111
Robinson v. Kilvert	126
Roe v. Hayley	88
Rogers v. Rice	503
Roundwood Colliery Co., re	309, 323, 358, 364
Rumball v. White	320
Russell v. Watts	77
Sanderson v. Mayor of Berwick-upon-Tweed	132
Sarson v. Roberts	123
Savery v. Enfield Local Board	265
Scales v. Lawrance	189
Scott v. Matthew Brown and Co.	503
Scott v. Brown	584
Schofield v. Hincks	458, 462, 562
Sear v. House Property and Investment Society	216
Seaward v. Paterson	234
Serle, re	502
Shackell v. Chorlton	358
Sharp v. Milligan	286
Shaw v. Earl of Jersey	356

	PAGE
Shelfer v. City of London Electric Co.	421
Shepherd v. Berger	486
Shrewsbury (Earl) v. Garfield	535
Shine v. Dillon	314, 450
Sidebotham v. Holland	84, 90
Simpson v. Hartopp	338
Silcock v. Wood	280
Sleap v. Newman	454
Smith v. Marrable	122
Smith v. Humble	156, 157
Smith v. Hunt	417
Smith v. Eggington	436
Smith, re, ex parte Hepburn	465
Smith v. Gronow	252, 489
South Kensington Stores, re	104
Southport Tramways Co. v. Gandy	526
Spencer's Case	437
Spicer v. Martin	237
Stanhope v. Haworth	497
Stanton v. Brown	417
Stradbroke v. Malcby	541
Stranks v. S. John	117
Strong v. Stringer	491, 501, 502
Stuart v. Diplock	234
Sutherland v. Sutherland	27
Swaine v. Ayres	502
Swansea Bank v. Thomas	104
Tadman v. Henman	324
Taite v. Gosling	239
Tew v. Jones	321
Thomas v. Owen	77
Thomas v. Mirehouse	387
Thomas v. Lulham	487
Thomas v. Jennings	555, 560
Thompson v. Lapworth	155
Thompson and Norris, etc., Co. v. Hawes	124
Thwaites v. Wilding	343
Tidswell v. Whitworth	154
Tod Heatley v. Benham	235, 236
Todd v. Flight	423
Tomlinson v. Consolidated Credit Corporation...	365
Towerson v. Jackson	30
Treloar v. Bigge	106, 216
Tremeere v. Morison	454
Tritton v. Bankart	470
Tucker v. Linger	221

TABLE OF CASES.

XV

	PAGE
Tulk v. Moxhay	440
United Club, re	104
Vale v. Moorgate Street, etc., Buildings... (note)	235
Von Knoop v. Moss and Jameson	340
Walker v. Hobbs 121, 125, (note)	297
Walker, re, ex parte Mills	465
Walker, re, ex parte Gould	489
Wallis v. Hands 118,	476
Walrond v. Hawkins	494
Walsh v. Lonsdale 13, 65, 275, 302, 324, 356,	432
Ware v. Booth	255
Warren v. Murray	302
Webb, re, Still v. Webb	267
Westminster Fire Office v. Glasgow Provident Society	211
Weston v. Metropolitan Asylums District ...	100
Weston v. Metropolitan Asylums Board ...	252
Wheatley v. Westminster Brymbo Coal Co. ...	230
White v. Hay	22
White v. Bradford-on-Avon Assessment Com- mittee (note)	241
White v. Tyndall	112
White v. Southend Hotel Co.	242
Whitehead v. Bennett	544
Whitham v. Kershaw	184
Wigsell v. School for Indigent Blind 232,	249
Wilkinson v. Rogers	233
Wilkinson v. Clements	248
Wilkinson v. Peel	361
Williamson v. Williamson	220
Willis, in re, ex parte Kennedy	310
Willson v. Love	101
Wilmot v. Rose	228
Wilson v. Queen's Club 33,	76
Wilson, re	105
Wilson v. Finch-Hatton 120, 122,	125
Wix v. Rutson	155
Wood v. Leadbitter... ..	6
Wood v. Cooper	236
Wood v. Clarke	338
Worthington v. Warrington	270
Wride v. Dyer	518
Zouche v. Parsons	54

ADDENDA.

—:—

Page 132.—*Sanderson v. Mayor of Berwick-upon-Tweed* was followed in the recent case of *Tebb v. Cave* (1900, W.N. 45), where it was held that the lessor of a house by erecting flats on adjoining property, which caused the lessee's chimneys to smoke, rendering some of the rooms practically uninhabitable, had committed a breach of his covenant for quiet enjoyment, because, although what he had done did not affect the title to, or possession of the house, it was a substantial interference with its enjoyment. Probably, too, it would fall within the principle that a lessor impliedly covenants not to derogate from his own grant (see as to the latter point, pp. 125-6).

Page 154.—See the case of *Farlow v. Stevenson* (1900, 1 Ch. 128), where, under a covenant containing the words "all taxes, rates, duties and assessments whatsoever . . . payable in respect of the demised premises," the lessee was held liable as between himself and his lessor to pay the expense of reconstructing a drain required by the local authority under the Metropolis Local Management Act, 1855.

Page 195.—Under "other points," note the recent case of *Ramage v. Womack* (1900, 1 Q.B. 116), where it was held that the occupation and payment of rent by a person beneficially entitled, though not a covenanting party to, the lease creates no contract by such person with the lessor to perform the covenants in the lease, nor any like equitable liability, notwithstanding a declaration in the lease by the lessee that he held the premises in trust for such person.

Page 214.—The decision of Ridley, J., in *Gentle v. Faulkner* was reversed by the Court of Appeal (May 19, 1900).

Page 417.—The judgment of Wright, J., in *Anderson v. Vicary* was affirmed by the Court of Appeal (*dissentiente* A. L. Smith, L.J.) (ESTATES GAZETTE, June 2, 1900).

LANDLORD AND TENANT.

CHAPTER I.

LEASES.

What is a Lease ?

There are various ways in which the relation of landlord and tenant may be brought about, the commonest being by means of a formal lease. A lease may be defined as an agreement between two parties, by which one party, who is called the landlord, allows the other party, who is called the tenant, the possession and enjoyment for a certain limited period of property belonging to the landlord, usually in consideration of a periodical payment called *rent*, and of the observance of certain stipulations and conditions relating to the property. The agreement, in fact, takes the form of a conveyance by which the landlord conveys—technically, *lets* or *demises*—the property to the tenant for a period which is either fixed at the time of the letting or which becomes afterwards fixed upon certain conditions being complied

with. The technical terms for landlord and tenant are respectively *lessor* and *lessee*. It is, however, not, necessary that the property should belong to the lessor in the sense that he is the absolute owner of it, *i.e.*, the freeholder. It is sufficient if he parts with some portion of the interest which he himself has. *Interest* is here understood to mean interest in point of time not of amount. Two illustrations will make this clear.

- (1) A is the freeholder of property, *i.e.*, the holder of the largest interest in land which can be enjoyed by a subject in this country. He allows B the possession of it for twenty-one years.
- (2) A is the holder of a lease of land for twenty-one years. He allows B the possession of it for seven years.

In both these cases A *lets* the property to B. It is essential that A should retain some interest, or what is called a *reversion* to the lease, otherwise he does not *let* but *assigns* the property. Thus, if in case (2) A lets B the property for twenty-one years, as he parts with all his interest, there is strictly speaking, no letting to B, but an *assignment*, the effect of which would be to substitute B as tenant in place of A to the person of whom A held this property. But there would be no tenancy between A and B, at any rate in the strict legal sense of the term, though A might stipulate for the payment

by B of a kind of rent and for other conditions applicable to a tenancy. The difference, which is important, between such a payment and rent, in the proper sense of the term, is that, while the latter is recoverable by *distress*, the former is not, but could only be sued for in an action. In fact, rent is that which is recoverable by distress, and no payment not so recoverable is rent. We shall have occasion to discuss this matter later on. We point to it now for the purpose of emphasising the rule as to what constitutes a tenancy in strict legal intendment. A lease, then, is a conveyance of property by one party to another for some less period than that for which the interest of the conveying party lasts.

The right of the lessor to the possession and enjoyment of the property is by the lease postponed until the termination of the lease, and meanwhile is called his reversion, because the possession will revert to him on the lease coming to an end. This reversion is capable of assignment like any other species of property, and the effect of assigning the reversion would be to substitute the assignee as landlord to the lessee. This also will be considered more in detail by-and-bye.

Duration of Leases.

Leases are granted for various periods ; thus, for lives—*i.e.*, for the life of the lessee or the

lives of some other persons ; for terms of years, or for some less periods—*e.g.*, on yearly, quarterly, monthly, or weekly tenancies. There are also some minor indefinite kinds of tenancies, such as a tenancy at will, and a tenancy on sufferance. Each of these will require separate discussion.

*The Lessee must have Exclusive Possession :
Difference between Lease and License.*

Whatever the period, the lessee must be entitled to the *exclusive* possession of the property leased, that is, such possession that no person, not even the lessor, could, except by agreement with the lessee, come upon it during the continuance of the lease without committing a trespass. Otherwise it is not a lease but a *license* merely, which is something very different and with different effects.

A lease is an actual conveyance of a particular estate in the land to the lessee ; whereas a license confers on the licensee no interest in the land. It is a mere permission to do on land something which without such license would render the party doing it a trespasser on that land. The licensor retains the right to go on such land for all purposes not inconsistent with such license. In fact, a rough test for deciding whether an agreement operates as the grant of a lease or of a license merely,

would be this—Would the grantor of the right to use the land be entitled to come upon it without the leave of the grantee? If not, the grant is a lease, otherwise it is only a license.

It is immaterial that a license may be worded like a lease, or even a rent reserved. If it is clear from the terms of it that it is a license, as above defined, it will operate as such merely. A license is moreover *revocable* at the will of the licensor, or at least upon reasonable notice. It is personal to the licensee, and therefore cannot, like a lease, be assigned.

A license is, however, irrevocable where it is coupled with a grant, at any rate so long as the grant continues, or where, though not coupled with a grant, the licensee has, acting upon such license, executed on the land works of a permanent and expensive character.

An interest, coupled with a grant, is not only irrevocable but confers an interest in the land which may be assigned, whereas, as above stated, a bare license is not assignable, being personal to the licensee.

Illustrations of Bare Licenses, and of Licenses coupled with a Grant of an Interest.

The following are bare licenses :—

An agreement to let a building for a specific purpose for one or more days, but the control remaining with the grantor.

An agreement giving the right to put up stalls in an exhibition or at a railway station at a weekly rent, the person to whom the right is given being excluded a certain time every day.

An agreement giving the exclusive use of rooms, possession being, however, retained by the licensor for cleaning and other purposes.

The following are licenses coupled with the grant of an interest :—

A grant of sporting, mineral or water rights.

A grant of a bare license may be verbal, but a grant of a license, coupled with the grant of an interest, must be by deed. Again, an agreement for such a grant must be in writing—a verbal agreement will not be specifically enforced unless there has been part performance. See the case of *Wood v. Leadbitter*, 13 M. and W. 842, for an exhaustive discussion of the difference between a lease and a license.

It has been recently held that an agreement expressed in the language of a lease, giving the right to use the surface of a wall for advertising purposes, though it does not operate as a lease strictly so called, but only as a license, is not revocable without proper notice, and that an action for damages for improperly revoking it may be maintained—a *fortiori* would this be so where the terms of the license provided for a certain length of notice being given to ter-

minate the agreement (*Kerrison v. Smith*, 1897, 2 Q.B. 445).

In such a case, though the license gives no estate in the property over which the right is to be exercised, it operates as a contract for breach of which an action for damages will lie.

Verbal and Written Leases : Presumption of Yearly Tenancy.

Prior to the Statute of Frauds ((1669), 20 Car. II., c. 3), a lease for any period was not required to be in writing. Then that Act made a written lease necessary in case of any term exceeding three years in duration; leases for a term not exceeding three years at a rent equal to two-thirds at least of the improved value of the premises—*i.e.*, a rack rent—being still allowed if only verbal. A *verbal* lease for a term exceeding three years was declared to have the force both at law and in equity of a lease *at will only*. This was the law until 1845, when by the 8 and 9 Vict., c. 106, leases required by the Statute of Frauds to be in writing were further required to be by *deed under seal*, otherwise they were to be *void at law*.

The conjoint effect of these two statutes as interpreted by the Courts was that a lease bad at law might nevertheless create at law a valid yearly tenancy by reason of the subsequent

conduct of the parties to it. This might be such as to raise, at any rate, a *presumption* of a yearly tenancy upon those terms in the void lease which were not inapplicable to a yearly tenancy. For instance, possession of the premises, and payment and acceptance of the rent fixed by the void lease, would be sufficient, in the absence of any rebutting evidence, to constitute a valid yearly tenancy to which all the terms of such void lease as could be applied to it would attach. The following have been held to be such terms :—Covenants as to rotation of crops or cultivation of lands on any agreed system ; as to paying rent in advance ; against underletting ; as to keeping the premises in tenantable repair ; as to abatement of rent in case of fire, and as to determining the tenancy at any time on giving six months' notice. On the other hand, covenants to build or to do substantial repairs would not be considered terms applicable to a yearly tenancy. (See the cases collected in "Foa's Landlord and Tenant," p. 257.)

The same presumption of a yearly tenancy arose in the case of a tenant who had entered upon premises under a lease void by the common law as distinguished from one void under the statute above mentioned ; *e.g.*, a lease granted under a power where the limit of the power had been exceeded (*Doe v. Watts*, 7 T.R. 83) ; or a lease granted by a corporation but not sealed with the corporate seal.

(*Ecclesiastical Commissioners v. Merral*, Law Rep. 4 Ex. 162); or again, in the case of a lease void under some particular statute (see *Magdalen Hospital v. Knotts*, L.R. 4 App. Ca. 324). In all such instances, if the tenant occupied and paid rent he was presumed, in the absence of any evidence to rebut such presumption, to be a yearly tenant on such of the terms of the void lease as were applicable to a yearly tenancy. The effect of entry and payment of rent under an *agreement* to grant a lease will be discussed by-and-bye.

The result was that where entry upon premises was made pursuant to a lease which was void, either by common law or statute law, occupation and payment of rent without more raised a presumption of a yearly tenancy on such of the terms of the void lease or of the proposed lease, as the case might be, as were applicable to a yearly tenancy, but that such presumption might be rebutted by evidence showing that the occupation of the tenant was not referable to a yearly tenancy.

This was the *legal* as distinguished from the equitable view. We shall presently see how a lease though void *at law* might nevertheless be treated *in equity* as having the effect of an *agreement for a lease*, and under certain circumstances virtually equivalent to an actual lease.

Agreements for Leases : their Use and Effect.

Agreements for leases are mostly entered into in cases where heavy mining, building or agricultural leases are proposed to be granted. They serve to bind the parties until the formal lease can be prepared ; but for ordinary occupation purposes agreements are usually dispensed with, the parties proceeding at once to execute the lease itself. The latter course has obvious advantages over the system by which an agreement is made to precede the lease. Thus, in the latter case, difficult questions often arise, *e.g.*, as to the position of a person entering upon property under an agreement for a lease, or again, whether the lease is in conformity with the agreement ; whereas, if possession be taken pursuant to a lease, any such problems are *ex necessitate* impossible.

However, it is necessary to devote some consideration to the subject of agreements for leases ; and, first, it may be stated that by the Statute of Frauds no action can be brought upon any agreement for a lease for a term, however short, unless the agreement be in writing and signed by the party to be made liable thereunder, or by his duly authorised agent.

A *verbal* agreement for a lease is therefore not enforceable unless there has been such a part performance of it as would support an action for

specific performance ; and the position of a party who has taken possession of property under a verbal agreement for a lease is *prima facie* the same as that of a person occupying under a void lease ; viz., he is, in the first place, a mere tenant at will, which tenancy will, however, by payment of rent or other equivalent act, be presumptively converted into a yearly tenancy on such of the terms of the proposed lease as are not inapplicable to a yearly tenancy. The same effect would follow occupation under a written agreement which was invalid by reason of noncompliance with the Statute of Frauds, or for some other reason (see *Coatsworth v. Johnson*, 55 L.J. Q.B. 220).

Now before the Judicature Acts, a person occupying and paying rent either under an agreement for a lease or under a lease void at law would have been *at law* only a yearly tenant. But if in the one case the agreement was such as would have been specifically enforced by a Court of Equity, or if, in the other case, the lease, though void *at law* as a lease, was capable of being construed as an *agreement for a lease* and specifically enforceable as such, then *in equity* in either case such person would have been deemed to hold the same position as an actual lessee on the terms of the agreed lease or of the void lease, as the case might be. The effect was that though he might have been ejected at law upon

a notice to quit, yet a Court of Equity viewing him as lessee in equity would have entertained his claim for specific performance, and, meanwhile, would have restrained the lessor's proceedings at law. This conflict between the legal and equitable estates was removed by the Judicature Acts, which caused the equity rules to prevail; so that now, whether a person occupies under an agreement for a lease capable of specific performance, or under a lease void at law but valid as an agreement, and as such capable of specific performance—he is in either case actual lessee. But a person occupying under a void lease not good as an agreement, or which, though good as an agreement, is not capable of specific performance, or under an agreement for a lease not capable of specific performance, would now, in all courts, be deemed to be only a tenant at will, or on payment of rent, etc., presumably a yearly tenant.

Again, where a person is let into possession pending negotiations for a lease or for an agreement for a lease, or for an assignment of a lease, or under a contract of purchase which afterwards falls through—his position in the absence of anything further is, in the first instance, merely that of a tenant at will, though such tenancy may be presumptively turned into a yearly one by subsequent payment of rent.

Effect of Valid Agreement for Lease.

If a valid written agreement for a lease be made, the position of a party who has entered into possession of property pursuant thereto will depend upon whether the agreement can be specifically performed, that is, whether he could obtain a decree for specific performance in proceedings for that purpose. It does not follow that a valid agreement for a lease can in all cases be specifically enforced, though an action for damages for breach of it would lie (see, as to this, *post* Chap. II.). If, therefore, the agreement is not specifically enforceable, such person will still be only, in the first instance, a tenant at will, though he may become a yearly tenant by subsequent payment of rent, etc., in the same way as a person who has entered under a void lease or agreement (see *ante* pp. 9, 12).

If, however, the agreement can be specifically performed, the person occupying in such manner will now, in consequence of the Judicature Act, 1873, be deemed to be occupying under the actual lease, on the equitable principle that an agreement for a lease of which specific performance may be decreed is equivalent to the actual lease itself (see *Walsh v. Lonsdale*, L.R. 21 Ch. Div., p. 9).

The case of *Walsh v. Lonsdale* is so constantly quoted in this connection, and is so essentially

the leading authority for the proposition above laid down, that it may be useful to give a summary of it, as it illustrates admirably the difference between the old and the modern view as to the position of a tenant occupying under an agreement as distinct from the actual lease.

The facts of the case were these. The defendant, by a written agreement dated May 29, 1879, agreed to grant and the plaintiff to accept a lease of a mill for seven years at a certain rent per annum for each loom, the lease to contain (*inter alia*) a stipulation that there should at all times be payable in advance on demand one whole year's rent in addition to the proportion, if any, of the yearly rent due and unpaid for the period previous to such demand. Under this agreement the plaintiff was let into possession of the mill and paid rent quarterly, not in advance, down to January 1, 1882, inclusive. In March, 1882, the defendant demanded payment of a year's rent and a proportionate part from January 1, 1882, and put in a distress. The plaintiff thereupon brought an action for damages for illegal distress, for an injunction, and for specific performance of the agreement to grant the lease. The injunction was granted, but only on terms of the plaintiff paying the rent into court, and the Court of Appeal held that since the Judicature Acts the rule no longer obtains that a person occupying under an executory agreement for a lease—provided it

can be specifically performed—is only made tenant from year to year by payment of rent, but that he is to be treated in every Court as holding upon the terms of the agreement, *i.e.*, of the agreed lease. Therefore, in this case, the plaintiff, holding under the agreement, was subject to the same right of distress as if a lease had been granted, and that, if under the terms of the lease a year's rent would have been payable in advance on demand, a distress for that was lawful. The judgment of the Master of the Rolls (Sir G. Jessel) is of such importance as laying down a rule which has since been consistently followed, that we think it advisable to reproduce here the portion of it which has been most frequently cited. "There is," said his Lordship, "an agreement for a lease, under which possession has been given. Now, since the Judicature Acts, the possession is held under the agreement. There are not two estates as there were formerly, one estate at common law by reason of the payment of the rent from year to year, and an estate in equity under the agreement. There is only one Court" (*i.e.*, the High Court of Justice, though with different divisions) "and the equity rules prevail in it. The tenant holds under an agreement for a lease. He holds, therefore, under the same terms in equity as if a lease had been granted, *it being a case in which both parties admit that relief is capable of being given by specific perform-*

ance. That being so, he cannot complain of the exercise by the landlord of the same rights as the landlord would have had if a lease had been granted. On the other hand, he is protected in the same way as if a lease had been granted; he cannot be turned out by six months' notice as a tenant from year to year. He has a right to say, 'I have a lease in equity and you can only re-enter if I have committed such a breach of covenant as would, if a lease had been granted, have entitled you to re-enter according to the terms of a proper proviso for re-entry. That being so, it appears to me that, being a lessee in equity, he cannot complain of the exercise of the right of distress merely because the actual parchment has not been signed and sealed.'

It will be observed that this judgment practically turned upon the fact that the agreement here was capable of being specifically performed; so that in deciding whether a person holding under an agreement for a lease is to be considered as an actual lessee or not, this point must always be borne in mind. This would naturally lead us to explain under what circumstances the Court will make a decree for specific performance of an agreement as distinguished from an order for damages for the breach of it.

It will, however, be more convenient to defer the discussion of this subject until after we have

dealt in detail with the form and contents of an actual lease. The doctrine of specific performance is one of great technicality and the application of its principles to the subject of leases will be more easily understood by the reader when he has mastered that subject generally (see *post* Chap. II.).

Formal Parts of a Lease.

A lease of whatever duration is drawn virtually upon the same lines, and its variations are usually caused by the difference in the uses to which the property is to be put. The following is a skeleton lease which can be adapted to any kind of holding. If it is under seal it is called an *Indenture of Lease*, if in writing not under seal it is termed a *parol** lease, or, more commonly, an *Agreement of tenancy* or an *Agreement for letting*.

This Indenture, made the *day of*
 18 , *between A of* (hereinafter called
 the lessor) *of the one part, and B of*
 (hereinafter called the lessee) *of the other part*
Witnesseth that in consideration of the rent hereby reserved, and the covenants hereinafter contained, and on the lessee's part to be respectively paid and performed the lessor hereby *demises* unto the lessee All [here follows the description of the property] except [here insert any reservation such as right of watercourse from adjoining property]. *To hold* the said premises, except as aforesaid, unto the lessee for the term of years, from the day of , 18 *Yielding and paying therefor* during the said term the yearly rent of £

* A verbal or oral agreement is also sometimes called a *parol agreement*.

This may be taken as the model to which every lease substantially conforms. In agricultural, building and mining and other special leases, the covenants will, of course, vary, but the words of demise, the reservation of the rent, and the proviso for re-entry, will always be found, whatever the nature of the lease.

With regard to leases not exceeding three years at a rack rent, we have already seen that they need not be under seal or even in writing, though sometimes a lease for two years or one year takes the form of an indenture. More commonly, however, the parol lease or agreement for letting will be used in case of lettings for periods not exceeding three years, and this will be found to differ from the formal indenture mainly in the omission of the special repairing and other lessees' covenants, which are insisted upon in leases for more than three years. Even where an indenture is used for a short lease the respective obligations of the lessee or tenant will be the same, the tenant agreeing to keep the premises in tenantable* repair generally, with an allowance for reasonable wear and tear, instead of entering into special repairing covenants as in a lease for more than three years.

* As to the meaning of "tenantable repair," see *post*, sections, "The Covenants to be Performed," "Express Covenant to Repair."

An agreement for letting for three years or under is generally in the following form :—

Memorandum of Agreement, dated the _____ day of _____, 18____, and made between A of _____, (herein called the landlord), and B of _____ (herein called the tenant), Whereby it is agreed as follows, that is to say, the landlord agrees to let and the tenant to take from the _____ day of _____, 18____ All [insert description of premises] for the term of [three years or two years or one year, or in case of a yearly tenancy after description of premises, say "from year to year" or "on a yearly tenancy"] at the yearly rent of £____, payable [quarterly], free of all deductions, except land and property tax. The tenant to keep the premises, except the roof and outer-walls, in good repair [or good tenantable repair] and all drains, etc., well cleansed, and once in every year at least to whitewash such parts of the premises as have hitherto been whitewashed, and not to assign, underlet, or part with possession of the said premises without the landlord's written consent.

Provided that [here follows a proviso for re-entry, which may easily be adapted from the previous precedent.]

In Witness, etc

It will be noticed that in an agreement of this kind the words of demise are not the same as in the more formal lease, but their legal effect will be the same if it is clear that the tenant is to have present possession of the premises, and not merely that the landlord undertakes to grant a formal lease.

"An agreement of tenancy" or an "agreement for letting" should, in fact, be distinguished from an "agreement for a lease." The latter contemplates a further document, viz., a formal lease. The former is itself a lease.

In every lease, then, whether in the form of an *Indenture*, or a *Parol Lease* or *Letting Agree-*

ment, the following constituent elements will have to be considered.

- 1.—The date.
- 2.—The parties.
- 3.—The words of demise.
- 4.—The property demised.
- 5.—The term of the lease
- 6.—The reservation of the rent.
- 7.—The covenants to be performed.
- 8.—The proviso for re-entry and other conditions (if any.)
- 9.—Miscellaneous.

Execution.

Attestation.

Stamps.

Registration, etc., etc.

The Date.

The date of a lease is not very material, unless it be necessary to refer to it in order to ascertain when the term of the lease is to commence. Thus, if no date be fixed for the commencement of the lease, it will generally be taken to begin at the date of the lease unless there be any internal evidence to the contrary. So where a lease is "from the day of the date," that means usually from the date which the lease bears and not from the date when it was actually executed. And a lease "from henceforth" would have the same meaning. If the lease bears no date, or some impossible date, then, if the term is to commence from the "date hereof" or "from henceforth," *date* will be understood to mean *delivery*, that is the date when the lease, if by deed, was delivered, or, if not by deed, was signed.

The date of the commencement of the term, is, however, most important, as, although it may be ascertained by reference to the date of the lease or to the date of its delivery, if it cannot be ascertained in some way, the lease will be void; and the same would be the result if an agreement for a lease contained no date for the commencement of the term, or if there were no material from which it could be ascertained (see *White v. Hay*, 72 L.T. Rep. 281); unless indeed possession were taken, in which case the term would be held to begin from the time of entry. (See further as to this *post*, section, "*The term of the lease*"; and see cases of *Anon*, 1 Mod. 180; *Boddington v. Robinson*, L.R. 10 Ex. 270, note, p. 272; *Foa, L. and T.*, 2nd ed., p. 84; *Woodfall, L. and T.*, 16th ed., p. 160.)

Parties to Leases.

There are various persons and bodies whose power to grant or take leases is subject to certain limitations, or with regard to whom, as lessors or lessees, particular incidents have to be noticed. Care should be taken to see that persons proposing to grant or accept leases are competent to do so. Moreover, a person not under any legal disability may have no title to the property he proposes to lease. An intending lessee or assignee of a lease has no right in the absence of special stipulation to call for the title

either to the freehold or leasehold reversions (Vendor and Purchaser Act, 1874, s. 2; Conveyancing Act, 1881, ss. 3, 13.); and if it should turn out that the lessor or assignor had no title there may be no remedy against him except a personal claim for damages for breach of covenant for title, or, in other words, for purporting to let or assign what in effect did not belong to him.

Leases by Estoppel.

Although a person may have no right to grant a lease, yet the execution of what purports to be a valid lease is binding on both the parties to it as between themselves. During the demise the lessor cannot turn round and say he had no right to grant the lease, nor can the lessee dispute his lessor's title. It is immaterial whether the letting is by deed or not, or what the length of the tenancy, nor does it matter whether the landlord actually gave possession or received rent as assignee of the reversion. But the estoppel, as it is called, does not bind third parties, nor is the lessee estopped from showing that his landlord's title has expired or from denying the title of a person claiming as assignee of the reversion by showing a title in some other person (*Carlton v. Bowcock*, 51 L.T. 659).

I.—LESSORS.

With regard to leases by the following persons, some special observations are necessary.

1.—*Tenants for Life.*

A tenant for life is the holder of a freehold estate equally with a tenant in fee simple, or a tenant in fee tail. But whereas, a tenant in fee simple is virtually unrestricted in his power to grant leases, the leasing powers both of tenants in tail and tenants for life are now subject to the conditions prescribed by various statutes dealing with settled land. Under these, the leasing powers of a tenant in tail are declared to be the same as those of a tenant for life (see Settled Land Act, 1882, s. 58).

By the common law a tenant for life (unless specially empowered by the settlement to grant leases) could not grant a lease to enure any longer than his own life. The Settled Estates Act, 1877, enabled him, with the consent of the Chancery Division of the High Court of Justice, to grant certain kinds of leases. But these leasing powers are now virtually superseded by those contained in the Settled Land Act, 1882. Section 6 of this Act enables a tenant for life to lease the settled land, or any part thereof, or any easement, right or privilege of any kind over

or in relation to the same for any purpose whatever, whether involving waste* or not, for any term not exceeding—

- (i.) In case of a building lease ninety-nine years.
- (ii.) In case of a mining lease sixty years.
- (iii.) In case of any other lease twenty-one years.

But the tenant for life cannot lease the principal mansion house and the pleasure grounds, and park and lands usually occupied therewith, or easements over them, without the consent of the trustees of the settlement or an order of the Court (S.L. Act, 1890, s. 10 (2)). But if the house is usually occupied as a farmhouse, or the site of the house and the pleasure grounds and park and lands (if any) usually occupied therewith do not together exceed twenty-five acres in extent, the house will not be considered a principal mansion house so as to require such consent of the trustees or order of the Court respectively for a lease thereof (S.L.A., 1890, s. 10 (3)).

The granting of these statutory leases is subject to a number of conditions specified in the Settled Land Acts, the most important of which are the following :—Every lease must be by deed and be made to take effect in possession

* As to the meaning of this, see *post*, section, "The Covenants to be Performed—Waste."

not later than twelve months after its date (S. L. A., 1882, s. 7, sub-s. (1)); and must reserve the best rent that can reasonably be obtained, regard being had to any fine taken and to any money laid out or to be laid out for the benefit of the settled land, and generally to the circumstances of the case (sub-s. (2)); and must contain a covenant for payment of the rent, and a proviso for re-entry on non-payment within a time therein specified, not exceeding thirty days (sub-s. 3).

Then the tenant for life, when intending to make a lease, must give notice to each of the trustees of the settlement (S. L. A., 1882, s. 45 (1)), a provision, however, which does not affect persons dealing *bona fide* with the tenant for life (*ib.* sub-s. (3)).

By s. 7 of the Settled Land Act, 1890, the following modifications of these conditions were introduced, viz. :—A lease for a term not exceeding twenty-one years at the best rent that can reasonably be obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life :—

- (i.) Without any notice to trustees under s. 45 of the Act of 1882.
- (ii.) Notwithstanding there are no trustees of the settlement for the purpose of the Settled Land Acts, 1882-1890.

- (iii.) By any writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent in cases where the term does not extend beyond three years from the date of the writing.

A lease to the wife of the tenant for life is not, it seems, in itself bad (see *Sutherland v. Sutherland* (1893), 3 Ch. 169), but a payment by the lessee to the tenant for life as an inducement to grant the lease, and not as a fine, would be ground for setting it aside (*Chandler v. Bradley* (1897), 1 Ch. 315).

In ascertaining what is the "best rent," money voluntarily expended by a tenant upon agricultural improvements is to be taken into account (Agricultural Holdings Act, 1883, s. 43); but otherwise, voluntary expenditure by a tenant is not to be included in "money laid out," so as to justify the tenant for life in taking less than the best rent (*re Chawner's Estate* (1892), 2 Ch. 192). But less than the best rent may be taken where settled land is let for working men's dwellings (Housing of the Working Classes Act, 1890, s. 14). See further with regard to building and mining leases granted by tenants for life, Settled Land Act, 1882, ss. 8-10; and Settled Land Act, 1890, s. 8, providing for rent under a mining lease being made to vary according to the price of the minerals; and the Settled Land Act, 1889, which provides that building

leases may contain an option of purchase by the lessee.

A settlement may confer on a tenant for life greater but not less extensive leasing powers than are given by the Settled Land Acts (see S. L. A., 1882, ss. 55-57).

A lease may be made by an equitable tenant for life, as well as by a legal one. The great majority of tenants for life have only equitable interests, the legal estate being in the trustees of the settlement. But the Settled Land Acts enable the equitable life tenant to grant a lease which shall create a legal term where the legal estate is the subject of the settlement. The effect is to make the rent and the benefit of the covenants in the lease become annexed to and run with the legal reversion (Conveyancing Act, 1881, s. 10). As to persons having the leasing powers of a tenant for life, see S.L.A., 1882, s. 58.

A lease by a tenant for life which is not in accordance with the special or statutory powers under which it purports to be granted is void as against the remaindermen under the settlement, and cannot be confirmed by their acceptance of rent and allowing the tenant to remain in possession; the effect of which is, it seems, merely to create a yearly tenancy, the tenant being, in the meantime only a tenant on sufferance.

2.—*Tenants for Years.*

A tenant for years not restricted by the terms of his own lease can grant a lease, *i.e.*, an underlease, of any length less than his own. He may leave a reversion of only a day in himself. A tenant from year to year can also lease from year to year, or even for a term of years, and retain a reversion ; but the underlease will enure only whilst his own lease lasts. Even a tenant for a less term than a year can sublet for any period less than the extent of his own holding. But a tenant at will, and a tenant at sufferance, can only grant a lease that will operate by way of estoppel (as to this, see *ante* p. 23).

3.—*Mortgagors and Mortgagees.*

By the common law, neither a mortgagor nor a mortgagee could alone, except under a power contained in the mortgage deed, grant a lease of mortgaged property that would be valid for all purposes. So far as a lease by a mortgagor is concerned, the reason for this rule is the technical one that by the mortgage the mortgagor has for the time being divested himself of the legal ownership of his property, and therefore has no interest out of which he can create a legal term. He is himself, apart from special stipulation, liable to ejectment at any time by the mortgagee, and merely retains possession during the mortgagee's pleasure. The result of

this position is that any person taking a lease from a mortgagor would also be liable to ejectment at the instance of the mortgagee, unless the latter chose to recognise him as his tenant by accepting rent from him, or by some other unequivocal act of recognition. Whether any such recognition has been made is a question of fact in each case, but the authorities show that a mere notice by the mortgagee to the tenant to pay his rent to him, unless assented to by the tenant, is not sufficient to create a new tenancy between him and the mortgagee; nor is the fact that the tenant continues in possession after receipt of such notice, evidence of such a tenancy (*Towerson v. Jackson*, 1891, 2 Q.B. 484). See for a fuller discussion of this difficult subject, Woodfall, L. and T., 16th ed., p. 57; Foa, L. and T., 2nd ed., pp. 49-51.

In cases not covered by s. 18 of the Conveyancing Act, 1881, to be presently mentioned, tenants of agricultural land and allotments under leases not binding upon the mortgagee at common law are protected from summary eviction at his hands by the Tenants' Compensation Act, 1890.

On the other hand, a mortgagee, though the legal ownership was by the mortgage deed transferred to him, could only grant a lease to enure so long as the mortgage was not redeemed. The mortgagor, by redeeming, could

at any time put an end to the lease. The practical effect of these rules was that the concurrence of both mortgagor and mortgagee was necessary to create a valid and binding lease of land in mortgage, unless either mortgagor or mortgagee had by the mortgage deed reserved to him alone a power of leasing, or had such a power conferred upon him by statute. At the same time, while neither mortgagor nor mortgagee could, as against the other, grant a binding lease, yet any such lease would be good as between the parties to it by virtue of the doctrine of estoppel, viz., a lease by a mortgagor would be good as between lessee and mortgagor; and a lease by a mortgagee would be binding as between lessee and mortgagee. It may be mentioned that a lease made by a mortgagor *before* the mortgage is unaffected thereby, the mortgage operating as an assignment of the reversion, entitling the mortgagee on giving the tenant notice of the mortgage to all rent owing at the time of giving such notice, and to all subsequent rent. The law with regard to leases by mortgagors and mortgagees still holds good where no leasing powers are given either by the mortgage deed or by statute. As it has become common to rely on the statutory powers of leasing, it will be necessary to state these. By the Conveyancing and Law of Property Act, 1881, s. 18, it is now provided, as regards mortgages made on

or after January 1, 1882 (and as regards mortgages made before that date, if the parties agree in writing that the provisions of the Act shall apply to such mortgages), that, if no contrary intention is expressed in the mortgage deed or otherwise in writing, a mortgagor of land while in possession shall, as against every incumbrancer, and a mortgagee while in possession shall, as against all prior incumbrancers (if any) and as against the mortgagor, have power to make from time to time any lease of the mortgaged land as follows:—

- (1) An agricultural or occupation lease for any term not exceeding twenty-one years.
- (2) A building lease for any term not exceeding ninety-nine years.

The mortgage deed may reserve further or other powers in the mortgagor or mortgagee, or both, and such powers are to be exerciseable, as far as may be, as if conferred by the Act, and with all the like incidents, effects and consequences, unless a contrary intention be expressed in the mortgage deed (sub-s. 13).

But nothing in the Act enables a mortgagor or mortgagee to make a lease for a longer term, or on any other conditions, than such as could have been granted or imposed by the mortgagor with the concurrence of all the incumbrancers if the Act had not passed (sub-s. 15).

A contract to make or accept a lease under

this section may be enforced by or against every person on whom the lease if granted would be binding (sub-s. 12).

These provisions of the section apply, so far as circumstances admit, to any letting and to an agreement whether in writing or not for leasing or letting (sub-s. 17). There are other requisites for leases to be granted under s. 18, as to which reference must be made to that section.

By this section read with s. 10 of the Conveyancing Act, 1881, the mortgagee gets the benefit of the covenants entered into by the lessee in a lease by the mortgagor after the mortgage (see *Municipal Building Society v. Smith*, 22 Q.B.D. 70). On the other hand, the mortgagee is bound by the lease just as if he had joined in granting it (*Wilson v. Queen's Club*, 1891, 3 Ch. 524).

4.—*Executors and Administrators.*

Leases for terms of years or any less period vest in the executors or administrators of the tenant as part of his personal estate. They can therefore grant sub-leases of such terms, just as an ordinary lessee can sub-let the demised property. But although the legal representatives have this power, it is one which must be very carefully exercised, as sub-letting

is not an act within the ordinary scope of the executors' or administrators' duty, whose usual course would be to sell the leaseholds, and may be challenged by the beneficiaries under the will or intestacy of the deceased.

A person proposing to take a lease from executors should be careful to see that the lease is justified; that is, that it was the best way of administering the estate, and if he cannot show this, he may be unable to support the lease against the persons beneficially interested in the property under the will or intestacy. Even where a lease can be shown to be advantageous to the estate, yet a provision giving the lessee an option of purchasing the estate at a fixed price, within a certain period, would be *ultra vires* of the executors, and would render the lease voidable at the option of the beneficiaries. The position of the executor or administrator with regard to granting sub-leases is very clearly shown in the case of *The Oceanic Steam Navigation Company v. Sutherland*, L.R. 16 Ch. Div. 236. This was an appeal from the decision of the Vice-Chancellor of the Lancaster Court, who had refused to grant specific performance of a clause of this kind contained in a sub-lease by an administrator. The following passage from the judgment of the Master of the Rolls (Sir G. Jessel) is instructive on this point:—"An administrator" he said "is considered in a Court of Equity as a trustee, and his primary

duty is to sell the intestate's estate for the payment of his debts. It is quite true that, having the legal estate in the leaseholds, he may in some cases underlet them, and the underlease will be supported in equity as well as in law. But that is an exceptional mode of dealing with the assets, and those who accept a title in that way must take it subject to the question whether it was the best way of administering the assets. In the present case, it may be that the letting of this property at £500 a year was a proper letting, it having been put up for sale and not sold; but the question is not whether this was a proper rent, but whether it was right to insert an option of purchase, so as to fetter the exercise of the trust for sale by preventing the administrator from selling the property to anyone but the plaintiffs for a period of seven years, at a price then fixed. It appears to me that it would be dangerous to hold that an administrator could do this, a mere trustee whose duty it was to sell within a reasonable time. In the case of an ordinary trustee, it is clear that no such option could be given by him; and, although an administrator is not an ordinary trustee, still he is in a similar position, and to support what has been done in the present case would, in my opinion, be not only a great extension, but an unauthorised and unwarranted extension, of the powers hitherto understood to be reposed in an

administrator. Therefore the agreement must be declared to be a breach of trust, and specific performance of it cannot be enforced."

Lord Justice James also said, in the same case, that, in this respect, he could see no difference between an executor or administrator and any other trustee. It should be noted that, as regards the power to grant a lease, there is this distinction between an executor and an administrator, viz., that the former may grant an underlease before probate, but the latter not until he has obtained letters of administration. One of two executors or administrators can grant a lease as valid as their joint demise, and it is equally good though it purport to be the grant of all.

A person who proposes to take an underlease from an executor should find out whether there has been any specific bequest of the property, and, if so, whether the executor has assented to such bequest.

The reason for this is that an executor's assent to every bequest, including one to himself, is necessary before it becomes completely vested in the legatee, *e.g.*, he may withhold such assent where the property is required to be sold for the payment of debts. If, then, there has been a specific bequest and the executor has assented to it, he has no longer any power to deal with it, and if he purported to grant a lease it would simply be void. An executor should be careful not to enter into an

informal agreement for a lease which cannot be enforced, or he may be charged with any loss as arising from a wilful default (see the case of *Connolley v. Connolley*, 17 Ir. Ch. Rep. 208).

Married Woman as Executrix.—A question has arisen with regard to the power of a married woman, who is an executrix or administratrix, to grant underleases of the leaseholds vested in her as such. Before the Married Women's Property Act, 1882, she could not do so without her husband's concurrence, and it has been pointed out that this Act does not in terms authorise her to grant underleases. Such authority seems, however, to be implied in the power given to her to act as executrix or administratrix, and in the freeing of the husband from any liability for her breaches of trust, unless he has intermeddled in the administration. (See Married Women's Property Act, 1882, ss. 1 (2), 24; "Williamson Executors," 9th ed., vol. I., pp. 793-4, 833-4.)

5.—*Agents.*

A lease may be granted by an agent on behalf of his principal, which will be binding on the latter if the agent had authority to grant it, or if the principal subsequently ratifies his agent's act. If the agent had no authority, he incurs a personal liability in the shape of being open to an action for damages for falsely representing himself to have an authority which

he did not in fact possess (*Collen v. Wright*, 8 E. and B. 647). Moreover, the agent may so act in granting a lease as to render himself personally bound, irrespective of the liability of his principal. If, for instance, he executes a lease or an agreement for one in his own name only, he is *prima facie* personally liable on it, though he be described in the body of the document as agent for another, unless it is made clear from some other part of the instrument that he did not intend to execute it as a principal. He should, therefore, take care to execute the lease or agreement as agent.

The agent's authority need not be in writing, unless he purports to grant a lease for a term exceeding three years, when his authority must be under seal (8 and 9 Vict., c. 106, s. 3). But the revocation of such authority need not be by deed.

Bailiffs, etc.—Bailiffs, stewards and land agents have no authority, as such, to grant leases or enter into agreements for them. At most, a bailiff could, for preservative purposes, create a tenancy at will. But, if a steward be empowered to manage property, he has an implied authority to make contracts for leases in accordance with the custom of the neighbourhood. Again, a farm bailiff who is authorised to let from year to year on the usual terms must not, without express directions, let on special terms.

6.—*Corporations.*

There are various classes of corporations. Thus, there are corporations sole and aggregate ; corporations ecclesiastical and lay ; eleemosynary and civil. The Crown is the principal lay corporation sole, and there are several ecclesiastical corporations sole, viz., archbishops, bishops, deans, prebendaries, parsons and vicars.

The Crown.—By the common law, the Crown can grant a lease of any extent to bind its successors, but now the leasing powers of the Crown, except as to its private estates, are for the most part vested in the Commissioners of Woods and Forests, who can only grant ordinary leases for terms not exceeding thirty-one years, or building leases for any terms not exceeding ninety-nine years, subject in each case to certain conditions and restrictions. (See 10 G. IV., c. 50, as amended by 8 and 9 Vict., c. 99 ; also the statutes regulating leases of Crown lands collected in Woodfall L. and T., 16th ed., pp. 16, 17.)

Ecclesiastical Corporations.—The whole subject of the capacity of ecclesiastical corporations to grant leases of their lands is one of great complexity, owing to the number of the statutes which have from time to time been passed, amending and repealing former enactments ; until the existing law can only be, so to speak, dug out of a mass of Acts, of which the first

dates from the reign of Henry VIII., while the last is not much more than twenty years old. Archbishops, bishops and other ecclesiastical corporations sole could not by the common law grant leases to extend beyond their own lives, except with the consent or confirmation of certain designated persons. Ecclesiastical and eleemosynary corporations aggregate, on the other hand, could by common law grant leases upon their own authority for any length of time.

By the conjoint operation of 1 Eliz., c. 19, and 13 Eliz., c. 10, s. 3, 14 Eliz., c. 11, 14 Eliz., c. 14, all ecclesiastical corporations sole, and all ecclesiastical corporations aggregate, and some eleemosynary corporations, viz., colleges and the governors of any hospital and other house ordained for the sustentation of the poor (see case of *Magdalen Hospital v. Knotts*, L.R. 4 App. Ca. 324), are prohibited from leasing their property for more than twenty-one years or three lives, except that leases of houses (not being capital or dwelling houses of the lessors) in cities, boroughs, corporate or market towns, or the suburbs thereof respectively, together with not more than ten acres of land, may be granted for any term not exceeding forty years.

Leases not made in accordance with the above provisions are void, which has been held to mean void at election. That is to say, they

have been held to be valid in the case of corporations sole, at any rate during the life of the corporation sole, or in the case of corporations aggregate, during the lifetime of the head of such corporation, but voidable by the successors.

In the case, however, of *Magdalen Hospital v. Knotts* (4 App. Ca. 324), a lease by an eleemosynary corporation was held to be within the operation of 13 Eliz. c. 10, and *void* for non-compliance with the provisions of that statute. But whether such leases be void, or only voidable, they are, it seems, binding *by estoppel* on those lessees who have accepted them.

Parsons and vicars still require confirmation of the patron and Ordinary for any such leases as they are by the above statutes authorised to grant. Further, by 5 and 6 Vict., c. 27, s. 1, incumbents may grant farming leases of the lands belonging to their benefices (except the parsonage and ten acres of glebe) for terms not exceeding fourteen, or, where the lessee enters into certain covenants specified in the Act, twenty-one years. The consents of the bishop and patron are also necessary, and there are other restrictions contained in the Act (*quod vide*). Again by 5 and 6 Vict., c. 108, all ecclesiastical corporations sole and aggregate may, with consent of the Ecclesiastical Commissioners and of other specified persons (see s. 20), grant building or repairing leases for terms not exceeding ninety-nine years (sec. 1), and mining leases

(sec. 6), and leases of easements (sec. 4), for terms not exceeding sixty years ; and s. 1 of 21 and 22 Vict., c. 57, gives the Commissioners power to approve leases proper to be granted by such corporations, if of permanent advantage to them, for such terms and in such manner as the Commissioners may think advisable.

Under later statutes any ecclesiastical corporation, sole or aggregate, may lease lands acquired by them by authority of 14 and 15 Vict., c. 104, from year to year or for a term of years in possession, not exceeding fourteen years, at the best obtainable rent and (with the approval of the Church Estates Commissioners) may grant mining and building leases of such lands for any term and in any manner the Commissioners may think fit. 23 and 24 Vict., c. 124, s. 8, provides that no leases of lands assigned as the endowment of any see under that Act can be granted by the archbishop or bishop, otherwise than from year to year or for any term not exceeding twenty-one years, subject to conditions such as those contained in the Act 5 and 6 Vict., c. 27 (*vide ante*) ; but with the approval of the Estates Committee of the Ecclesiastical Commissioners, mining, building or other leases may be granted on such terms as they may think proper. Copyholds now stand on the same footing as lands of other tenure as regards the leasing powers of incumbents, etc. (see 24 and 25 Vict., c. 105, as amended by 25 and 26 Vict., c. 52).

Lay or Civil Corporations, including Universities and Colleges.—By the common law the leasing powers of civil corporations were unrestricted; but their leases were required to be by deed under the corporate seal. A person, however, who occupied and paid rent under a corporation lease, void for want of compliance with this formality, would be a yearly tenant on such of the terms of the void lease as were not inapplicable to a yearly tenancy (see *Ecclesiastical Commissioners v. Merral*, L.R. 4 Ex. 162, and *ante* p. 9).

The common law powers of leasing have, however, been modified by statute with regard to various kinds of corporations.

(a) *Joint Stock Companies.*—Companies incorporated by Act of Parliament for carrying on any undertaking may, by their directors, grant leases, which, if the term exceed three years, must be under their corporate seal; but, if the term do not exceed three years, may be in writing signed by any two of the directors, or verbal (Companies Clauses Consolidation Act, 1845, s. 97).

With regard to companies registered under the Companies Acts, 1862-1893, the powers of any such company to lease would appear, notwithstanding the wide language of s. 18 of the Companies Act, 1862, to depend upon its Memorandum of Association, which usually

confers express powers of leasing. (See Palmer's Company Precedents, part I., p. 308 ; form 102 and pp. 4, 5 ; and Companies Act, 1862, ss. 12, 18.)

Where such companies have leasing powers their leases must be under the corporate seal, except where the lease is for a term which, if granted by a private person, would not require a seal, *i.e.*, for a term not exceeding three years, when it seems they may be made in writing simply, or verbally, on behalf of the company by any authorised agent (see Companies Act, 1867, s. 37).

(b) *Railway Companies*.—Railway companies can only lease their lines by virtue of a special Act.

Again, corporations holding land are empowered by the Housing of the Working Classes Act, 1890, to lease the land for the purpose of the erection of working-class dwellings.

(c) *Municipal Corporations*.—The leasing powers of municipal corporations now depend upon the Municipal Corporations Act, 1882, as amended by the Local Government Act, 1888, s. 74. The council of any such corporation cannot lease their lands without the consent of the Local Government Board for any longer time than thirty-one years, at a rent approved as reasonable by the council of the borough without any fine (s. 108 (2) (a)) — or,

in the case of building leases, or leases of buildings specified in the Act (s. 108 (2) (b)), for a longer term than seventy-five years. By s. 109 the council may, with the approval of the Local Government Board, dispose of any corporate land by way (*inter alia*) of lease in such manner and on such terms as the Local Government Board approve. S. 110 authorises the council to renew leases, and s. 111 to demise sites for working-men's dwellings.

(d) *Universities and Colleges*.—The Universities of Oxford, Cambridge and Durham, and the several colleges in each University, are civil corporations, whose leasing powers are now regulated by the Universities and College Estates Act, 1858 (amended by the Extension Act, 1860, 23 and 24 Vict., c. 59). By these Acts the Universities of Oxford, Cambridge, Durham, and their several colleges, including Christ Church, Oxford, and the colleges of Winchester and Eton, may by indenture, sealed with the common seal of such university or college, grant leases for terms not exceeding twenty-one years, at rack rents, and other specified leases, subject to conditions set out at length in the Act (*quod vide*). The London University is also a corporation, and its leasing powers, as well as those of colleges not within the Acts of 1858 and 1860, are regulated by their own charters, statutes and bye-laws.

(e) *Eleemosynary or Charitable Corporations.*—The leasing powers of eleemosynary or charitable corporations are now either regulated by the terms of the trust under which they are created, or are conferred by statute. The principal Acts relating to leases of charity lands are the Charitable Trust Acts, 1853, 1855, 1860, 1869. The Act of 1853 created a “treasurer of public charities” in whom charity property was vested, and empowered the Charity Commissioners to authorise the letting of charity lands on building, repairing, improving or other leases, or on mining leases, though not authorised by the trust; enacting that such leases should be as valid as if they had been authorised by express terms of the trust affecting the charity (ss. 21, 26, 47).

The Act of 1855 substituted for the “treasurer of public charities” the “official trustee of charity lands,” in whom all lands vested in the former official are now vested on the same trusts (s. 15), and the acting trustees of every charity, or a majority not consisting of less than three of them, are empowered to grant all such leases of lands vested in such official trustee as if they had been legally vested in themselves, and with all the like legal right and obligations (s. 16).

All leases authorised by the Commissioners under either of these Acts shall be valid, notwithstanding any disabling Act—*e.g.*, 13 Eliz.

c. 10, s. 3—applicable to the charities whose estates are the subject of them; and all leases granted by any trustees or persons acting in the management of any charity pursuant to or in conformity with any scheme for the letting of the property or any part of the property of the charity, prepared and approved by the Commissioners, shall be valid (ss. 38, 39). But such trustees or persons may not, without the express authority of an Act of Parliament, or of a court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the Commissioners, grant any lease in reversion after more than three years of any existing term, or for any term of life, or in consideration wholly or partly of any fine, or for any term of years exceeding twenty-one years (s. 29). In the case of the *Bishop of Bangor v. Parry* (L.R., 1891, 2 Q.B. 277), it was held by Mr. Justice Charles, under this section, that a lease granted by the trustees of a charity for more than twenty-one years without the approval of the Charity Commissioners was not valid for twenty-one years, but absolutely void. His lordship adopted the reasoning of the House of Lords in the case of *Magdalen Hospital v. Knotts* (4 App. Ca. 324), where it was held that under 13 Eliz., c. 10, s. 3, a lease granted in contravention of that section was void and not merely voidable.

Where the trustees or persons acting in the administration of any charity have power to

determine on any lease of the property of the charity, a majority present at any meeting of their body, duly constituted, are empowered to execute and do all assurances and acts necessary for carrying out any such lease, and all such assurances, acts and things are to be as effectual as if respectively executed and done by all such trustees or persons for the time being, and by the official trustee of charity lands (Charitable Trusts Act, 1869, s. 12, repealing s. 16 of the Charitable Trusts Act, 1860, which required a two-thirds majority of the trustees).

Again, by the Allotments Extension Act, 1882, trustees of charity lands, which are not otherwise used for the benefit of the parish in which they are situated, as recreation ground or otherwise, for the enjoyment or general benefit of the inhabitants, are empowered, or rather required [see the language of s. 4] to take proceedings for letting such lands to cottagers, labourers and others. (*Cf.* the Allotments Act, 1887, under which provision is made for letting land by sanitary authorities for allotments to the labouring classes. See, too, as to letting allotments and small holdings by Parish and County Councils, Local Government Act, 1894, and Small Holdings Act, 1892.)

7.—*Trustees of Settled Estates.*

The leasing powers of trustees of settled estates have been considerably modified by the

provisions of the Settled Land Act, 1882, giving leasing powers to tenants for life, and other limited owners ; and having regard to s. 56, it seems that, although trustees may still exercise leasing powers given to them by the settlement, yet where such powers embrace the same objects as those embraced by the Act, they can only exercise them with the consent of the tenant for life, or any person having the powers of a tenant for life. (See note to Settled Land Act, 1882, s. 56 ; Hood and Challis' " Conveyancing and Settled Land Acts," 5th ed., p. 285.)

On the other hand, there is nothing to prevent a settlement conferring on trustees additional or larger leasing powers than are given by the Act (see s. 57 (1)) ; and, notwithstanding anything in the Act, such additional or larger powers will be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by the Act, unless a contrary intention is expressed by the settlement (see s. 57, sub-s. (2)).

8.—*Tenants in Tail.*

Tenants in tail in possession have now the same leasing powers as a tenant for life, and so have "tenants in tail after possibility of issue extinct" (see Settled Land Act, 1882, s. 58, sub-ss. (i.) (ii.) (vii.)).

A tenant in tail in possession having the

power to disentail the estate can, of course, by so doing, acquire the full power of disposition over his property which a tenant in fee simple enjoys; but so long as the entail subsists, the leasing powers are limited as before-mentioned.

9.—*Copyholders and Lords of Manors.*

(a) *Copyholders.*—Generally speaking, a copyholder cannot, without the consent of his lord, grant a lease for a longer term than one year. There may, however, in some manors, be a custom authorising longer leases without such consent. A lease made for a longer period than is warranted either by the custom of the manor or the license of the lord entails a forfeiture of the copyholder's holding, that is, the lord may treat it as a cause of forfeiture, if he chooses; but he may waive it by any act recognising the tenancy after he has known of the cause of forfeiture, *e.g.*, by subsequent acceptance of rent. And, except as between the copyholder and the lord, the lease would be good, both as between the parties to it and as regards all other persons. Moreover, only the person who is lord at the time when the forfeiture accrues can avail himself of it; not a subsequent reversioner or remainderman.

The lord is not bound to grant his copyholder a license to demise. He has absolute

discretion whether to give or withhold it; but if he gives a license it operates as a confirmation of the lease, and a subsequent forfeiture by the copyholder would not entitle the lord to avoid the lease as against the lessee.

By giving his license the lord parts with his interest, and therefore the lessee from the copyholder can assign or underlet without further license from the lord being necessary.

See further as to leases by copyholders, "Scriven on Copyholds," 7th ed., pp. 208-211.

The tenant for life of a settled manor may grant to any of his copyhold or customary tenants a license to make such lease of his copyhold or other customary land as a tenant for life is, by the Settled Land Act, 1882, empowered to make of freehold land (Settled Land Act, 1882, s. 14 (1)). The license may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees or payments (sub-s. 2). The license must be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence (sub-s. 3). This section does not, apparently, give the tenant for life any greater power than he would have if he were a tenant in fee simple of the manor. It does not enable him to exceed the customs of the manor.

(b) *Lords of Manors*.—The lord of a manor

cannot grant a lease of copyhold lands except by the custom of the manor. But the wastes of manors, to an extent not exceeding one twelfth part, may be leased by the lord, with the consent of three-fourths of the commoners, for not more than four years, for the best rent that can be obtained by auction, the same to be applied in draining, fencing, and improving the residue (13 Geo. III., c. 81, s. 15); or, by custom, the lord may be entitled to lease parts of the waste, but the custom must not extend to giving him unrestricted power in this respect or it will be bad (Elton on Copyholds, p. 279).

10.—*Trustees in Bankruptcy. Liquidators and Receivers.*

(1) *Trustees in Bankruptcy.* — No express power of leasing is given to the trustee of a bankrupt's estate; but it seems that he has, by virtue of s. 56 (4) of the Bankruptcy Act, 1883, power to lease any part of the bankrupt's property which is by the bankruptcy vested in him.

The leasing power of a tenant for life under the Settled Land Act, 1882, does not, however, pass to his trustee in the event of his bankruptcy, but remains in the bankrupt (Settled Land Act, 1882, s. 50).

(2) *Liquidators.*—Liquidators of companies

under a voluntary winding-up can lease the property of the company (Companies Act, 1862, s. 133); but in the case of a compulsory winding-up they can only do so subject to the control of the Court (Companies Act, 1862, s. 95; Companies (W. U.) Act, 1890, s. 12 (3)).

(3) *Receivers*.—A receiver of property appointed by the High Court can in strictness only lease it with the sanction of the Court, but in practice is allowed, without applying for such sanction, to grant a lease for any term not exceeding three years. But whether he grants such lease with or without the sanction of the Court, he cannot create a legal demise—except as against himself by estoppel, if the tenants attorn and pay their rents to him—because he has not the legal ownership; and therefore, where leases are sanctioned by the Court, they are usually directed to be made by the person who has the “legal estate” or power of leasing (see as to leases by receivers, Daniell’s Chancery Practice, Vol. II., pp. 1699, 1700.)

II.—*District, Parish and County Councils.*

(1) *District Councils*.—District Councils are empowered by the Allotments Act, 1887, to acquire land for letting in allotments to labourers. For the conditions under which such lettings may be made reference must be had to the Act itself.

(2) *Parish Councils*.—Parish Councils have similar leasing powers under the Local Government Act, 1894—s. 10 (6)—and parish meetings in rural parishes which have no separate parish council may acquire such powers from a County Council (*ib.* sec. 19 (10)).

(3) *County Councils*.—These have power to let property in small holdings for agricultural purposes. The conditions are set out in the Small Holdings Act, 1892.

12.—*Infants, Married Women, Lunatics, etc.*

(1) *Infants*.—An infant can by the common law grant a lease which will be good unless, as he may do, he avoids it when he comes of age. If he dies under age his heir may avoid it. The lessee, however, cannot repudiate the lease (*Zouche v. Parsons*, 3 Burr. 1794). Avoidance must take the form of ejectment, entry, etc., or some other open and notorious act on the part of the lessor, otherwise the lease remains in full force and effect. In other words, an infant's lease is valid unless expressly avoided by the lessor at his majority; it does not require confirmation then to give it validity. This being so, it seems that although the Infants' Relief Act, 1874, prevents an infant from ratifying after majority a contract made during infancy, yet, regarding a lease granted by a minor as a contract, a

ratification of it which is merely implied from acceptance after majority of rent reserved by the lease, is not such a ratification as is made void by the Act.

The general rule that a lease by an infant is good unless avoided by him on his majority only applies to a lease actually granted by the infant himself. A lease by an agent on behalf of an infant is therefore void *ab initio*, and cannot be confirmed by him so as to bind him (*Doe v. Roberts*, 16 M. and W. 781).

Leases of infants' property may also be granted in some cases by guardians; but guardians appointed by the Chancery Division of the High Court can only lease with the consent of the Court. Under the Settled Land Acts, where an infant is absolutely entitled in his own right to land, or where a tenant for life, or a person having the powers of a tenant for life, is an infant, then the leasing powers may be executed on his behalf by the trustees of the settlement; or, if there are none, by such person and in such manner as the Court on the application of the guardian or next friend of the infant may order (see S.L.A., 1882, ss. 59, 60).

Guardians for the purposes of the Agricultural Holdings Act, 1883, may be appointed by a County Court judge, where the landlord is an infant (A.H. Act, 1883, s. 25).

(2) *Married Women*.—Practically all married women can now lease their separate property as fully in all respects as if they were single women; but in the case of those women who were married before January 1, 1883, they can only do so as to property to which they became entitled since that date. It does not seem necessary to refer here to the provisions of the Married Women's Property Act, 1870, which conferred limited powers of leasing on married women in respect of certain kinds of property held to their separate use.

(3) *Lunatics, etc.*—(a) *Lunatics*.—There is a difference between a person found lunatic by inquisition and one not so found. The latter can grant leases which are only voidable by him if it can be proved that the lessee knew the lessor was so insane at the time of granting the lease as not to be capable of understanding what he was about. But it is not sufficient for the lessor merely to show that he was so insane at the time (see the case of *Imperial Loan Co. v. Stone*, 1892, 2 Q.B. 599, where the capacity of a lunatic to contract was discussed).

In the case of a lunatic who has been found so by inquisition, his power to lease becomes vested in his committee, who may, by order of the judge in lunacy, grant leases of the lunatic's property for building, agricultural, or other purposes, and leases of minerals forming part

of such property, whether the same have already been worked or not, and either with or without the surface or other land ; accept a surrender of any lease and grant a new lease and execute any leasing power vested in a lunatic having a limited estate in the property over which the power extends (Lunacy Act, 1890, s. 120 (d) (e) (g) (h)). The committee may also be authorised to grant leases of property of which the lunatic is tenant-in-tail (s. 122 (1)). Where a tenant for life, or a person having the powers of a tenant for life, is a lunatic so found by inquisition, the committee has power under the Settled Land Act, 1882, s. 62, to exercise in his name and on his behalf, under an order of the Lord Chancellor or other authority in lunacy, the leasing powers of a tenant for life under that Act. But the committee cannot give the necessary notice under s. 45, unless he has previously obtained the sanction of the Court of Lunacy (see *re Ray's Settled Estates*, 25 Ch. D. 464.)

(b) *Drunkards*.—Akin to the position of a lunatic is that of a drunken person who proposes to grant a lease. A lease granted by a person when so drunk as not to know what he was doing may be subsequently avoided or confirmed by him at his option.

(c) *Persons under duress, etc.*—A lease granted by a person under duress, or undue influence,

may be set aside. Undue influence usually arises from a course of conduct, or circumstances, or the relative positions of the parties. Thus, if a ward should grant a lease to his guardian, there would be a legal presumption that undue influence had been used to procure such lease, and upon the lessee the onus is thrown of rebutting such presumption by proving that no better terms could have been obtained by the lessor.

13.—*Miscellaneous.*

There are also other persons and bodies whose leasing powers present special features, *e.g.*, joint owners, persons under powers, convicts, parish officers, judgment debtors and creditors ; but it has been deemed unnecessary to refer to these here in any detail.

II.—LESSEES.

It will only be necessary to consider a few of the persons and bodies whose capacity to accept leases comes in question.

I.—*Corporations and Public Bodies.*

Corporations may be lessees, but can only contract to become such under their common seal, and they cannot contract verbally for a tenancy, though they may be liable in an action for use and occupation for occupying without

a sealed contract, but only for the period during which they have actually occupied. This is very clearly laid down in *Finlay v. Bristol and Exeter Railway Company*, 7 Exch. 409. There the defendant company had occupied premises for a year under a verbal tenancy. They continued in occupation for another year, at the end of which they removed their goods without any previous notice to quit, but paid rent up to the end of the following quarter. An attempt was made to hold them liable for the remaining three quarters' rent under an implied contract. But it was held that, though they were liable for rent during the period they actually occupied, they were not liable for the three quarters during which they did not occupy. "If," said Baron Parke, "instead of being a corporation the defendants had been a private individual, who, after having occupied for a year, might by parol contract hold for another year or as tenant from year to year, his conduct in continuing in possession after the expiration of the term for which he originally took the premises would be evidence for the jury that he and the plaintiff had mutually contracted with each other that there should be a demise for another year or even from year to year. *But that would be on the ground of an implied contract arising from the conduct of the parties.* These defendants, however, being a

corporation, cannot contract by conduct, but only by a binding agreement under seal; .

. . so that no fresh interest was created at the expiration of the second year and the company are only bound to pay for the time that they actually occupied."

Again, a corporation can only become a lessee of land by license from the Crown, or by statute, except where the lease is of land for certain specified public objects. Otherwise a forfeiture of the land to the Crown will be incurred (see Mortmain and Charitable Uses Act, 1888, ss. 1, 6).

Some ecclesiastical corporations *sole*—*e.g.*, incumbents of benefices, or other spiritual persons performing the duties of any ecclesiastical office, cannot become lessees for occupation purposes of more than eighty acres of farming land, without the written consent of their bishop, and then only for terms not exceeding seven years (see 1 and 2 Vict., c. 106, s. 28).

Leases granted to corporations *sole* vest on death not in the survivors as is the case with leases to corporations *aggregate*, but in the executors, unless there be a special condition to the contrary.

There are, again, various public bodies who may become lessees of land by virtue of special statutory powers, *e.g.*, county and borough

councils, district and parish councils, guardians, library authorities, etc. Their capacity to accept leases, and the conditions on which they are empowered to do so, are set out in the statutes under which they are respectively empowered, and more detailed reference to them here is unnecessary.

2.—*Trustees.*

A trustee can take a lease on behalf of his beneficiaries, but he stands to the lessor in the relation of an ordinary individual. There is no privity between the lessor and the beneficiaries. The trustee alone is liable to the lessor as tenant, though he has a right to be indemnified out of the trust estate.

A lease by a trustee to himself is bad, though he will be held to it if it is disadvantageous to him, and will have to account for any profit made if it is in his favour (see "*Lewin on Trusts*," 10 ed., p. 554).

Trustees of Charities.—Leases may be granted to trustees of charities, subject to the provisions of the Mortmain and Charitable Uses Act, 1888, being complied with.

3.—*Agents.*

A lease may be made to an agent by his principal, but such leases are regarded with suspicion by the law, that is to say, the onus

lies on the agent to show that he treated for the lease on the footing of a stranger, and that the contract was entered into in perfect good faith with full information to the principal and for an adequate consideration. Questions as to the fairness of leases granted to agents by their principals usually occur in the case of stewards or land agents taking leases from their employers. It is important to note that there is a presumption of undue influence in these cases, which the lessee must rebut by showing that the transaction is unimpeachable.

4.—*Married Women.*

A married woman is no longer under any incapacity to become a lessee, but may enter into any contract for a lease in the same way as if she were a single woman, and any lease granted to her becomes her separate property (Married Woman's Property Act, 1882, s. 1, sub-s. 1, 2).

5.—*Infants.*

A lease to an infant is, like a lease granted by him, voidable at his option on coming of age or within a reasonable time afterwards; otherwise it is *prima facie* binding upon him. If the infant lessee wishes to avoid the lease he must give notice of his intention to do so, unless the lessor by his

conduct waives such notice. If the lessee does not repudiate, he is liable to be sued on it, even during minority, unless the lease be manifestly disadvantageous to him; and if not avoided on majority all current rent and arrears accrued during infancy will be recoverable, even if the lease be disadvantageous.

If the lessee avoids the lease he will only be liable for any rent actually due before such repudiation; but he cannot recover any premium which he may have paid for the lease unless there has been a total failure of consideration.

The lessor cannot avoid the lease unless the infant has obtained it by falsely representing himself to be of age, in which case, though the Court might set it aside, they would not allow the lessor to claim for use and occupation (see *Lempriere v. Lange*, 12 Ch. D., 673).

6.—*Lunatics, etc.*

A lease granted to a lunatic or idiot stands on the same footing as a lease granted by one, viz., it is voidable, unless fairly granted and accepted and enjoyed by the lessee. Under the Lunacy Act, 1890, the committee of a lunatic (see s. 116, as to what lunatics are within this provision) may be authorised by the Judge in Lunacy to surrender and renew leases

on behalf of, and for the benefit of, the lunatic (see ss. 120-122).

7.—*Miscellaneous.*

(a) *Trustees of Renewable Leaseholds.*—As to leases to these, see Trustee Act, 1893 (ss. 11-19).

(b) *Aliens and Denizens.*—As to leases to these, see Naturalisation Act, 1870.

The Words of Demise.

On referring to our model form of lease it will be found that the operative part of the lease is as follows:—"The lessor hereby 'demises' unto the lessee," etc.

The word "demise" is not, however, essential, nor is the word "let," either or both of which it is usual to employ. (As to the effect of the word "demise," see *post*, section "Covenant for quiet enjoyment.") Any words may be used which show that the lessor means to part with possession of the premises to the lessee for a definite period.

It is advisable, however, to follow the usual form, otherwise a question may arise as to whether the instrument operates as a present demise—that is as an actual lease—or only an agreement for one. Though the distinction is not now so important as formerly, for the reason already stated (see *ante*, p. 12), it has still some substance. It is sufficient here to say that if

the language of the document itself without external explanatory evidence shows that the lessor means to give, and the lessee to take, possession of the property proposed to be let, and otherwise contains all the material terms of the letting, such document operates as a lease. But if the document on the face of it either expressly or impliedly points to a formal lease as being intended by both parties before the actual relation of landlord and tenant is to be constituted between them; or if it leaves material terms to be fixed by a subsequent document—then it can at most operate only as an agreement for a lease. See the recent case of *Duxbury v. Sandiford* (80 L.T. 552), where a letter written by the owners of premises to a person in occupation of them, by which they “agreed to let her keep possession for a term of ten years,” was held to amount to a demise for that period; presumably on the principle of *Walsh v. Lonsdale* (already referred to, *ante*, p. 13), *i.e.*, that the document had the effect of an agreement for a lease, and was therefore equivalent to an actual lease. It should be noted that the Queen’s Bench Division had held the letter to be a mere personal license. *Cf. Mardell v. Curtis* (W.N., 1899, p. 94), where on an agreement somewhat similarly worded the Court decreed the execution of a lease.

The Property Demised.

It may be mentioned that practically all kinds of property, real and personal, may be leased; but with regard to incorporeal hereditaments—*e.g.*, advowsons, tithes, easements, rights of fishing, sporting, etc.—a deed under seal is necessary, however short the term, and though the lease may include corporeal hereditaments let at one entire rent. (As to the effect of an invalid lease of an incorporeal hereditament, see Foa, L. and T., 2nd ed., p. 15.)

The property demised is usually described in the lease with great particularity, more, in fact, than is really necessary. But although by implication of law much passes under a demise which is commonly set out in full, yet it is essential that the “parcels”—to use the technical term—should be described with reasonable accuracy.

The specific description of the property, viz., “dwelling house,” “farm,” “public-house,” “piece of land,” “piece of garden ground,” etc., etc.—the precise locality—the dimensions and boundaries—should all be stated clearly, and so as to admit of easy identification. To this end a plan drawn on the lease is commonly and usefully employed.

In addition to the land, or house, etc., it is usual to enumerate such things as generally go or are used in connection therewith, and

especially fixtures and other chattels in the nature of fixtures (as to what constitute fixtures see *post*, Chap. XIII.).

All these things, in fact, as well as those which are obviously necessary for the occupation and enjoyment of the property demised will pass without specific enumeration. In this connection, reference may be made to the provisions of the Conveyancing Act, 1881, s. 6 of which enacts that (1) a conveyance—which term includes a *lease*—of land shall, unless there be any contrary intention expressed in the conveyance, include and operate to convey with the land all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights and advantages whatsoever, appertaining or reputed to appertain to the land or any part thereof, or at the time of conveyance demised, occupied or enjoyed with, or reputed or known as part and parcel of or appurtenant to the land or any part thereof; while (2) a conveyance—including also a *lease*—of land *having houses or other buildings* thereon, shall include and operate to convey with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land, houses, or

other buildings conveyed or any of them or any part thereof; or at the time of conveyance demised, occupied or enjoyed with or reputed, or known as part or parcel of or appurtenant to the land, house or other buildings conveyed or any of them or any part thereof.

In making use of certain phrases care should be taken to limit their meaning if anything less than is imported by them is intended to be demised. Thus, the term "land" legally includes everything growing upon or attached thereto, and all houses and buildings thereon. "Messuage," again, and "house" includes not only a dwelling house but the garden, yard and field adjoining it, and everything which is legally implied by the term "curtilage." "Farm" includes the farmhouse and the lands used with it, but "water" does not include the land under it, and if both are to pass by the demise they should be described as "a piece of land covered with water." A demise of water would only pass a right of fishing. So "arable land," "meadow" or "pasture land" are specific descriptions of land, and are confined to land of that particular kind.

The grant of a wood or of the pasture, or the "issues and profits" of land will pass the actual soil as well as the timber and the feeding respectively.

In the recent case of *Carlisle Café Co. v. Muse* (67 L.J., Ch. 53) it was held that a lease of the rooms on a floor is a lease of a separate dwelling, and includes the outer wall so far as it is solely appropriate to the rooms let.

What is intended to pass under a demise of land, etc., is a question of fact, and if the description be not sufficient to make this clear, parol evidence is admissible to explain what that intention is, but if the language be plain, no such evidence can be admitted to contradict it in order to show that the parties intended something other than what they have actually expressed.

Sometimes property is described in general terms and also afterwards in particular terms, in which case the latter description will control the former (see the case of *Doe v. Galloway*, 5 B. and Ad. 43, and particularly the judgment of Parke, B., at p. 51).

Again, if there be a clear and sufficient description of the property demised, the addition of some inaccurate qualification, or what is technically termed "*a falsa demonstratio*," may be disregarded. This rule has been carried to a considerable extent, as in the case of *In re Bright Smith* (31 Ch. D. 314), where a grant of a farm was thus expressed—"a freehold farm at E, now in the occupation of B." In fact the farm was partly copyhold; but it was held that

the description “at E” and “in the occupation of B” was a sufficient description, and the word “freehold” was rejected as *falsa demonstratio*. (See for a description of a right of way which was rejected as *falsa demonstratio*, *Cowen v. Truefitt*, 1898, 2 Ch. 551.)

Grant and Reservation of Easements.

(i.) *Grant of Easements*.—A very important part of the parcels consists of the “easements” or rights over other property, which commonly go together with the land or buildings, etc., demised. Such easements pass or arise sometimes impliedly, sometimes expressly. In case of leases by deed granted since 1881, if no contrary intention appear therein, the demise will of itself, by virtue of s. 6 of the Conveyancing Act, 1881, pass virtually all that can be given by express enumeration (see the very full language of s. 6 cited *ante*, p. 67).

But in the case of leases to which this section does not apply, the extent of the easements (if any) implied in a lease will depend on the wording of the demise.

(a) If the lease contains no express words as to easements, then—to quote the useful formula drawn up by Mr. Foa in his treatise on the Law of Landlord and Tenant, 2nd ed., p. 69-70, the demise:

“(1) *Passes* to the lessee easements strictly appurtenant to the premises demised; (2) *creates*

in his favour easements of necessity over adjacent property retained by the lessor; (3) *converts* into easements in his favour all such *quasi-easements* as are 'continuous' and 'apparent' and also (probably) rights of way over a formed and defined road."

It will be necessary to explain these rules, which are highly technical and not easy to understand without some practical illustration.

(1) A demise (without more) *passes* to the lessee easements strictly appurtenant to the premises demised—that is, rights over other property, not being property of the lessor. The distinction may be thus explained. A man cannot have an easement for one part over another part of his own property. Both parts being his own he can use them in whatever way he pleases. He may make a track or road across one field for the more convenient access to another field. In such a case, he uses the track as a convenience, but not as a *right*. It is not an easement, but is sometimes called a *quasi-easement*. But if he demises the part to which he has been in the habit of getting access by means of such track, then the question arises whether what was in his own hands merely a quasi-easement will become an actual *easement* in favour of the lessee (as to this, see *post* (3)). The following is an instance of an easement strictly appurtenant which passes by a demise. A owns a piece of land X, in respect of which

he has always enjoyed a right of way over a piece of land Y, belonging to B. A demises X to C, the demise will without any express words pass to C the right of way over Y.

(2) A demise (without more) *creates*, in favour of the lessee, *easements of necessity* over adjoining land retained by the lessor. A has two properties, X and Y. The only means of access to X is by a road over Y. A demises X to B and retains Y. The demise (without more) creates in B's favour an easement of necessity over such road. It would be the same if A were to demise Y to C.

Other easements of necessity are the use of a drain or an artificial watercourse or a right of support.

It is perhaps doubtful whether an easement of necessity will endure in favour of the lessee any longer than the necessity exists. In *Holmes v. Goring* (2 Bing. 76), which is usually cited as the leading authority, it was said that a grant arising out of the implication of necessity cannot be carried further than the necessity of the case requires, a dictum the soundness of which, though questioned in some subsequent cases, has not been expressly negatived. It may be taken that the enjoyment of an easement of necessity must be limited by the necessity at the time of the demise, and that the right ceases with the necessity. It is a way of necessity, not for all

purposes for which the land may be at any time used, but for the purpose only of enjoying it in the state in which it was when the way of necessity was created (see per Jessel, M.R., in *Corporation of London v. Riggs* (13 Ch. D., p. 807, and "Gale on Easements," 7th ed., pp. 157-160).

(3) A demise (without more) *converts* into easements in favour of the lessee all such *quasi-easements* as are "continuous and apparent," and also probably rights of way over a formed and defined road.

We have already explained that a person cannot have an easement over his own property, though he may use one part of his property in such a way that, if he were not owner of both, there would be in effect an easement over such part. Being owner of both, it is not an easement but a quasi-easement only. This is very scientifically and the same time clearly expressed in the following passage, in "Gale on Easements" (7th ed., p. 100). "It is true that strictly speaking a man cannot subject one part of his property to another by an *easement* (the italics are ours), for no man can have an easement in his own property, but he obtains the same object by the exercise of another right, the general right of property. But he has not the less thereby permanently altered the quality of the two parts of his heritage; and if after the annexation of peculiar qualities he aliens one

part of his heritage, it seems but reasonable, if the alterations made are *palpable and manifest and in their nature permanent changes* in the disposition of the property so that one part thereby becomes dependant upon another, that a purchaser should take the land with the qualities which the previous owner had undoubtedly the right to attach to it."

If, then, the landowner demises the part which enjoys this quasi-easement, it will depend on the nature of the quasi-easement whether the demise will without more operate to pass it to the lessee.

The result of a number of cases is to show that only such quasi-easements as are "continuous and apparent" will pass by implication under a demise simpliciter.

A "continuous and apparent" easement is one which is permanent and obvious, not one which must necessarily be seen, but which may be seen or known on a careful inspection by a person ordinarily conversant with the subject ("Gale on Easements," 7th ed., p. 100). The use of a drain or watercourse, or the enjoyment of access of light are easements of this kind, whereas a mere right of way is obviously an easement of an intermittent nature. With regard, however, to rights of way, it has been suggested that a right of way over a formed and defined "road" would pass by a mere grant which would include, of course, a demise.

Lord Justice Fry, in *Bayley v. Great Western Railway Co.* (26 Ch. D., p. 457), thus puts it: "If one person owes both Whiteacre and Blackacre, and if there be *a made and visible road* over Whiteacre and that has been used for the purpose of Blackacre in such a way that if two tenements belonged to several owners there would have been an easement in favour of Blackacre over Whiteacre, and the owner aliened Blackacre to a purchaser retaining Whiteacre, then the grant of Blackacre, either 'with all rights usually enjoyed with it,' or 'with all rights appertaining to Blackacre,' or *probably the mere grant of Blackacre itself without general words*, carries a right of way over Whiteacre."

Where a quasi-easement is in this way converted into an actual easement in favour of the lessee, the extent to which he will be entitled to use it is a matter of some difficulty to determine, and has been discussed in several recent actions. The result of them appears to be that the lessee may not have exactly the same amount of user as was formerly enjoyed, but will get as much as is or will during the lease be reasonably necessary to the fair and comfortable use of the demised premises, regard being always had to their condition at the time of the lease; while, of course, the amount may be increased or diminished by the happening of such special circumstances as must be taken to

have been in the contemplation of the parties at the time of granting the lease. (See the case of the *Birmingham, etc., Banking Company v. Ross*, L.R. 38 Ch. D. 295; *Wilson v. Queen's Club*, 1891, 3 Ch. 522.)

(b) In the next place we have to consider how far such words as "with the appurtenances," or "with all rights, etc., appertaining to the said premises," operate to pass or create easements in favour of the lessee.

The result of a review of the authorities is to show that these words do not convey much more than would be implied without them, viz., that they would pass nothing more than is legally appurtenant in the strict sense of the term. If it be desired to pass conveniences which have been, not as of right but in fact, used together with the demised premises, then some such words as "used, occupied and enjoyed therewith" must be employed.

Such words are, indeed, as has been pointed out, as much a description of the thing demised as if, *e.g.*, the way had been set out by its termini; in either case, it would be a matter to be ascertained by parol evidence what was comprised by the description (see "*Gale on Easements*," 7th ed., p. 79).

If the words "used or enjoyed" therewith are in the words of demise, it is now settled that it is immaterial whether such user was as of right or a user in fact only (*ib.* pp. 82-93.)

(ii.) *Reservation of Easements in favour of the lessor.*—Generally speaking, where premises are demised, there can be no implied reservation of an easement over them in favour of the lessor, there must be an express reservation in the lease to give the lessor any such right ; but in the following cases easements may be impliedly reserved either in favour of the lessor or some persons claiming under him.

1. Easements of necessity.
2. Rights of support as between adjoining buildings.
3. Where there is evidence of facts which show that a reservation must have been intended (see *Thomas v. Owen*, 20 Q.B. D. 225).
4. When it is inequitable in the lessee, under the circumstances of the particular contract, to object to such an easement in favour of the lessor (*Russell v. Watts*, 10 App. Ca.).
5. Where two adjoining properties are let by their common owner to different persons at the same time each lessee takes his lease subject to any apparent easement then used or enjoyed by such common owner in respect of either of such properties over the other (see *Allen v. Taylor*, 16 Ch. D. 355).

6. In case of contemporaneous leases of adjoining plots under a building scheme the lessee of any one plot cannot interfere with easements essential to a building erected in accordance with the scheme by the lessee of any of the other plots.

Other Reservations in the Lease.—Besides easements expressly reserved by the lease there are other rights and privileges included in the term reservation, which strictly denotes something to arise or issue in future out of the land demised—*e.g.*, rent. Among these may be mentioned rights of sporting and other *profits à prendre*. These reservations are really in the nature of regrant by the lessee to the lessor and must therefore, except as regards game, be contained in a lease under seal and executed by the lessee. This is usually effected by the execution by the lessee of a counterpart or duplicate of the lease, the latter being executed by the lessor. A regrant of this kind, *viz.*, of an easement or profit, is only co-extensive with the lease itself; so that if the lessee purchased the reversion it would be extinguished in the merger of the term which would at once follow (see *Lord Dynevor v. Tennant*, 13 App. Ca. 279).

One of the commonest reservations is the free passage of water and soil from adjoining property, which has been held to mean water

in its natural condition, and such matters only as result from the ordinary use of land for habitation purposes.

Reservation of Game.

To the rule that a reservation of an easement or profit to the lessor must be in a lease under seal and executed by the lessee, an exception exists in the case of a *reservation of game*, which may be contained in a parol lease—that is, a verbal lease or a lease in writing not under seal (see Game Act, 1831, s. 8). There must, however, be an actual reservation of the right of the lessor to take the game on the demised premises, *e.g.*, a mere agreement by the lessee not to destroy but to preserve the game is not sufficient to give the lessor this right, though it restricts the tenant; and its effect is, it seems, merely to cause the sporting rights to remain in abeyance during the term (see *Coleman v. Bathurst*, L.R. 6 Q.B. 366).

A reservation of “shooting and sporting” includes all things generally sported after, and is not limited to game in the strict sense of that word. On the other hand, under a reservation of “hunting,” the lessor will not be entitled to shoot feathered game. Reservations of this kind must be construed reasonably, so as not to impose undue burdens on the tenant;

they will not confer upon the lessor, or anyone claiming under him, the right to bring an excessive quantity of game on to the demised premises so as to injure the tenant's crops.

Under a reservation of shooting rights to the lessor, his heirs, and assigns, neither the lessor nor his assignee can authorise a stranger to shoot on his own account in the absence of the lessor or his assignee (*Reynolds v. Moore*, (1898) 2 Ir. R. 641, Q.B.D.).

With regard to *ground game* it is doubtful whether a right to take ground game can now be reserved to the lessor having regard to the provisions of the Ground Game Act, 1880. That Act gives the occupier (including an owner in occupation, see *Anderson v. Vicary*, W.N., 1899, p. 122), the inalienable right to take ground game on his holding, whether he can give any other person a concurrent right as well. It has been held that, where the occupier has the right, apart from what the Act gives him, to take ground game, *e.g.*, where there is no reservation to the landlord of the right to take ground game, there is nothing in the Act to prevent him transferring that right to a third person, and that the Act only prevents the occupier surrendering to the landlord the right which is made inalienably his by the Act (see ss. 2, 3 and *Morgan v. Jackson* (1895) 1 Q.B. 885). It is true the Act contemplates the occupier giving permission to other persons

to share this right, but such persons are strictly defined, and it does not appear that the lessor can be given a right even concurrently with the occupier. At any rate, such right could not be reserved by the lease (see Oke, "Game Laws," 4th ed., pp. 103-106).

Exceptions.

Although exceptions and reservations are frequently coupled in the reservation clauses, strictly speaking, an exception differs from a reservation in this, that it is the exclusion from the demise of some definite part of the property comprised therein; whereas, a reservation merely relates to some right exercisable over it—*e.g.*, easements or profits. The part *excepted* therefore remains in the lessor.

It must not be repugnant to the lease, that is, it must not involve a contradiction in the description of the parcels, nor must it be of anything essential to the property demised; but though the exception must be of some definite part of the property demised, it is not necessary that such part should be specifically described—*e.g.*, an exception of so many acres from the lease of a farm will be valid, the lessee having the right to choose the part excepted, if the lease has been executed, and the lessor, if it has not.

In case of any doubt as to the meaning of an exception, the lessee will receive the benefit of such doubt.

Exception of Trees and Minerals.—These are the commonest exceptions. An exception of “trees,” or of “wood and underwood,” or of “timber trees and other trees,” or even of “trees of whatever kind,” will not in itself include fruit trees, which must be specifically mentioned. The term trees as used in an exception *prima facie* means trees useful for building or other purposes. Nor will the term include the soil, except so much as is actually necessary to the growth of the trees. But an exception of “all wood,” or “all underwood,” will be presumed to pass the soil intervening between the trees.

The exception of any part of the demised property carries with it, as accessory thereto, whatever is necessary to it—*e.g.*, where trees are excepted, a right to enter the demised premises at reasonable times for the purpose of cutting them.

Exception of Mines and Minerals.—The word “minerals,” whether with or without the word “mines,” *prima facie* means whatever substance can be got from beneath the earth’s surface. It may, of course, receive a more limited meaning, either from the context or the nature of the lease, or having regard to any reasonable

custom not inconsistent with the exception. An exception of minerals gives by implication to the lessor, a way-leave or right to go on the demised land to get or carry away the minerals; but notwithstanding the exception, the lessee has a right to surface support in the working of such minerals.

The Term of the Lease.

After the description of the property demised comes what is technically called the *habendum*; that is, the limitation of the extent of the lessee's interest in point of time. The lessor demises the property to the lessee to hold for a certain period, and the fixing of this period is, of course, one of the most important things in the lease.

Two points, then, have to be considered under this head, (i.) when the lease is to commence; (ii.) how long is it to continue.

(i.) *The Commencement of the Lease.*—This may be made to date either from a past, present, or a future time; and the first of these is at least as common as either of the others. But the fact of the lease being expressed to commence from some past date does not operate to confer any interest on the lessee as from such date. It only marks the period of the lease; and the actual interest of the lessee, as such, only begins from the date of the demise—*e.g.*,

the lessee would not be liable for any breach of covenant committed before then.

Putting the matter in another way, suppose a lease dated March 25, 1890, the habendum is "from September 25, 1889, for the term of twenty-one years." This is virtually equivalent to saying that it is a term for so much as is now to come of a period of twenty-one years from September 25, 1889 (see *Cooper v. Robinson*, 10 M. and W. 694).

To hold "from" a certain date probably now means exclusive of such date; but whether it be exclusive or inclusive depends on the intention of the parties as shown by the context and the subject matter of the lease.

The expressions "from the day of the date," "from henceforth," have the same meaning. But in considering the validity of a notice to quit, given in time and expiring on the anniversary of the commencement of a tenancy, there is no difference between a tenancy expressed to commence "at" a certain day and one to commence "on" or "from," or "on and from" such date (per Lindley, L.J., in *Sidbotham v. Holland*, L.R., 1895, 1 Q.B. 384).

Therefore, where a lessor lets premises on a yearly tenancy, "commencing on the 19th of May, 1890," it was held that this was the first day of the term, and that a notice given to expire on May 19 in any year was good (*ib.*).

The commencement of the term must either be ascertained at the time of the lease, or be capable of being fixed by reference to some event or circumstance. Provided it can be ascertained at the time when it is to take effect that is sufficient. A common instance of this would be where a lease is to begin after the determination of an existing lease, or after the dropping of a life, or on payment of a sum of money. A lease expressed to be in reversion, *i.e.*, to commence after the cesser *quocunque modo* of a previous term, will take effect at once should such prior term for any reason become void or terminate at an earlier date. If a lease is executed conditionally—that is, if the execution is to take effect on the fulfilment of some condition—it is until then said to be delivered merely as an *escrow* (or writing); and whether a deed operates as an escrow is a question of fact depending on evidence as to the intentions of the parties in this respect. In the case of a parol lease, *i.e.*, a lease not by deed under seal, it would seem that a similar principle would prevail; that if such lease was signed by the lessor and handed to his solicitor, to be given to the lessee on performance of a condition—*e.g.*, payment of a premium—it would not operate to pass any interest to the lessee, except on fulfilment of such condition.

(ii.) *The Duration of the Lease.*—The *duration* as well as the *commencement* of the term must

either be expressly limited by the lease, or be made ascertainable by reference to some collateral matter by which it may be definitely calculated.

A lease to continue so long as the tenant shall occupy the premises, or remain in the service of the lessor, affords, perhaps, one of the commonest instances of the latter method of computation.

The text books contain a number of instances of irregular limitations of terms, with the construction which has been placed upon them. In the present day such limitations seldom occur, and it does not seem necessary to do more than refer here to them. The reader who wishes to see how the ingenuity of lawyers has been employed in interpreting these informal *habendums* may consult Woodfall, L. and T., 16th ed., pp. 163-8.

The following may be specially noted as most likely to be met with in the case of short tenancies. A letting "for one year" is simple enough, but a letting for "one year and so on from year to year" creates a term of at least two years, and one which may continue even longer unless the proper steps to determine it be taken (as to which see *post* "Yearly Tenancies.") Again, a lease for five years, with a proviso that after the expiration of three years either party may determine it by giving six months' notice ending at the time of year when

the tenancy commenced, may be taken to be a letting for at least four years (see *Gardner v. Ingram*, 61 L.T. 729).

A lease for "seven, fourteen or twenty-one years, as the lessee shall think proper," gives him at least seven years. It is, in effect, the same thing as making the term for twenty-one years in the first instance, determinable, nevertheless, at the option of the lessee, at the end of the seventh or fourteenth year, and the latter form of limiting a term on these conditions is that now usually adopted. If the lessee has to give notice before exercising his option to determine the lease, the notice must expire at the end of the period when he may determine it.

If the lease is for seven, fourteen, or twenty-one years, determinable at seven or fourteen years, "if the parties shall think fit," the consent of both is necessary before the lease can be so determined. If the lease is silent as to who shall have the option to determine, the lessee alone has the right.

A power for either party to determine a lease will run with the land, both as to the reversion and the term, even though it be not accurately reserved to the proper representatives respectively of the landlord and the tenant.

Thus, an option reserved to either party, or his executors or administrators, was held to be exercisable by the devisee of the fee simple re-

version of the lessor ; though he was not strictly either the executor or administrator of the lessor (see *Roe v. Hayley*, 12 East. 464).

An option reserved to the lessee, his executors, administrators and assigns, does not include an equitable assignee of the lessee, the term "assigns" meaning the persons legally entitled as between themselves and the lessors to the term and to the benefit of the covenants entered into by the lessor and lessee respectively, which run with the land demised (see *Friary Holroyd, etc. v. Singleton* (1899) 1 Ch. 86).

Where a power is reserved to determine a lease by notice this will mean its determination *in toto*, unless the lease authorise a partial determination. And where the lessor is authorised to recover possession of the whole, or part of the premises, for purposes of "building, planting, accommodation, or otherwise," the words "or otherwise" will be construed to mean purposes *ejusdem generis* with those previously enumerated (*Johnson v. Edgware, etc., Railway Co.*, 35 L.J. Ch. 322).

It sometimes happens that a yearly *letting* contains a proviso that the tenant shall not have notice to quit so long as he pays his rent or performs some other condition. It seems that such a letting constitutes only a yearly tenancy, notwithstanding the proviso in question, which is, in fact, considered to be

repugnant to the very nature of a yearly letting, and therefore to be rejected; and the same rule would hold good in the case of any other so called "periodic" tenancy—*e.g.*, a quarterly, monthly, or weekly letting. But this rule would seem to be strictly applied only where there is an actual present *demise*, and not where there is an *agreement*, though specifically enforceable, for a future lease. In the latter case the Court would give effect to any stipulation of the kind referred to by decreeing either a lease for the life of the lessee (see *Mardell v. Curtis*, W.N., 1899, p. 93), or if the lessor had himself only a term, then a lease for the residue of such term, less the last day, if the lessee should so long live (see *Kusel v. Watson*, 11 Ch. Div. 129).

A lease for life may be created by *deed*, either where there is a grant or demise simply, without any estate being expressed, or where the demise is a periodic one with a superadded stipulation of the nature above mentioned, *e.g.*, a lease from year to year, or tenable for any shorter periodic term, with a proviso that the lessor will not determine the tenancy so long as the tenant pays his rent, etc. In the latter case the tenant gets a conditional life interest.

A term ends with the last moment of the anniversary of the day from which it is expressed to commence, *e.g.*, if a lease for a year is to commence from December 25, 1897, it

will not expire until midnight of December 25, 1898. If the term is to commence on a certain date, it will expire at midnight of the day preceding its anniversary; although, as already remarked, for the purpose of calculating the time of expiry of notices to quit, no distinction is taken between "from" and "on" (*Sidebotham v. Holland*, L.R. 1895, 1 Q.B., at p. 384).

The Reservation of the Rent.

How reserved.—Following the *habendum* comes what is, perhaps, the most important element in a lease, viz., the reservation of the rent to be paid by the lessee for the use of the demised premises. This is technically called the *reddendum*, the words "yielding and paying" or some equivalent expression being usually employed to show that rent is to be paid by the lessee during the term of the lease.

It is not, indeed, necessary that there should be any formal *reddendum*. Any expression showing that rent is to be paid during the term will amount to a good reservation. Thus the words "at or under the yearly rent of £ , " or "provided the lessee shall pay," or "the lessee covenants to pay," have been held to be sufficient for the purpose. It is, of course, usual to have a *reddendum* followed by an express covenant to pay the rent, and the utility of adhering to established and regular forms is

obvious, both for ease in reference and for the avoidance of questions which informal clauses are likely to raise.

What rent may consist of.—"Rent" is strictly a profit arising out of the land demised and is perhaps the best illustration of the difference between a "reservation" and an "exception." It is no part of the land or it would be an exception, but like an easement it is "reserved" out of the land (vide *ante* p. 81). It may consist either of money or services (its original name being rent service) or some other equivalent.

Must be distrainable.—The essential feature in it is that the peculiar remedy of *distress* must be available for its recovery. If a rent cannot be distrained for it is not a rent in the strict sense of the term, but merely a simple contract debt for which the ordinary method of recovery by means of process through the Courts must be resorted to. As the right of distress forms a most important security to the landlord for the due payment of the rent, giving him as it does a priority, with some exceptions, over all other claims against the goods and chattels of the tenant, it is necessary to clearly understand its nature and incidents. It must then issue out of "lands or tenements whereunto the lessor may have recourse to distrain."

Therefore, although a demise of the *herbage* of land may reserve a rent for which cattle

on the land may be distrained, a lease of an *incorporeal* hereditament—*e.g.*, an easement or profit such as a fishery or tithes—cannot reserve a rent because there is nothing to which the lessor can resort in order to distrain. It seems, however, that the Crown can reserve a rent out of an incorporeal hereditament because it can distrain on all the lands of the lessee (Co. Litt. 47a, note (1)). The distinction is, no doubt, not apparent to the lay mind.

The rent must be certain.—Next the rent must be *certain*, that is, either expressly fixed by the lease, or reserved in such a way that it can be ascertained with *certainty*. Thus, in some trade leases the rent is calculated with reference to the amount of output, *e.g.*, in a lease of a brickfield, the lessee may agree to pay a rent of so much per thousand bricks made, or in a lease of a weaving shed, of so much per loom run by the lessee.

Again, a rent may be made to vary in amount according to the septennial corn averages taken under the Tithe Commutation Act, 1836, as in the case of *Kendall v. Baker* (11 C.B. 842), where the rent was fixed at a certain sum for the first year, to be reduced or increased in each subsequent year of the term, according to the average price of wheat in any one year of the term, such average to be taken and ascertained from the then current year's averages

taken in the month of January in every year, under the Tithe Commutation Act, 1836.

A sliding scale rent rising or falling according to the average price of wheat is in force on some estates, notably on Lord Tollemache's Suffolk property. The form of reservation of such rent is given in "Lely and Peck's Precedents of Leases," Part XII., Form 33, cited in Woodfall L. and T. (16th ed.), p. 410, the schedule to the lease in question providing that, assuming the average price of wheat, barley and oats to be 31s. 6d. per quarter a rise or fall of 2s. 6d. per quarter would involve a corresponding rise or fall of 5 per cent. in the rent.

Again, a sliding scale rent is authorised in mining leases, granted under the Settled Land Acts ; s. 8 of the Act of 1890 providing that the rent may be made to vary according to the price of the minerals or substances gotten, or any of them, and such price may be the saleable value or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease (including a reference to arbitration), or may be an average of any such prices or values taken during a specified period.

The essential thing is that the amount must be definitely ascertained at the time when

it is made payable, or it cannot be distrained for. Also the *time* when it is to be paid must be certain.

It must be reserved to the lessor.—Next the rent must be reserved to the lessor, and his legal representatives, and not to a stranger. Formerly great care had to be used in correctly reserving the rent so that it should go to the proper representative of the lessor's interest, unless it was reserved *generally*, without saying to whom, when the law made it follow the reversion ; and now by the Conveyancing Act, 1881, rent reserved in a lease dated since 1881 will go with the reversion immediately expectant on the term granted by such lease, and be recoverable by the person from time to time entitled, subject to that term, to the income of the land leased (section 10). Thus, where a tenant for life grants a lease under a statutory or other power, the legal estate being in trustees, the rent reserved by such lease will go with the reversion, that is, the beneficial owner can sue for it ; and after his death it will go to the remainderman. So in a lease, under s. 18 of the Conveyancing Act, 1881, by a mortgagor in possession, the benefit of the lessee's covenants can be taken by the mortgagee. If rent be reserved to a stranger it is not strictly rent and therefore not distrainable, but may be sued for as a matter of contract between the parties.

Time of payment of the rent.—This should be clearly stated. A reservation of an annual or yearly rent, or a rent of so much a year, without more, will mean a rent payable yearly only.

Again, if the rent is made payable, *e.g.*, quarterly, this means quarterly reckoned from the date of the lease, and not on the “usual” quarter days, unless it be so stated. If there is any discrepancy between the time for payment mentioned in the *habendum* and that fixed by the *reddendum*, the latter will prevail, contrary to the general rule, where there is a discrepancy between the *habendum* and the *reddendum*, which is that the former will prevail. In the case of a lease and counterpart, under seal, if the counterpart contains no such discrepancy it will prevail over the lease, and the description in the *habendum* will be rejected.

Reservation of rent payable in advance.—This is allowable, and where so reserved the rent may be distrained for in advance. It is, however, necessary in making rent payable in advance to show clearly that it is *always to be so payable throughout the term*, otherwise it may only refer to the first quarter—*e.g.*, a lease contained the clause that “the rent was to commence at Michaelmas and to be paid three months in advance, such advance to be paid on taking possession.” This, it was held, made

only the first quarter's rent payable in advance. The Court will, however, if necessary to effectuate the obvious intention of the parties, hold that each quarter's rent is to be so payable throughout the term. Thus, in the recent case of *London and Westminster Loan Co. v. L. and N. W. R. Co.* (L.R., 1893, 2 Q.B. 49), where the rent was made payable on the usual quarter days, "and always, if required, a quarter in advance," it was held that rent was always due at the commencement of each quarter, but that it was not to be treated as in arrear, nor the landlords entitled to enforce their remedies for non-payment, until after demand for payment had first been made.

Place of payment.—A reservation of rent, without more, means that the rent is to be paid on the demised premises. Usually, however, there is an express covenant by the lessee to pay the rent, and if no particular place be named then it will be the lessee's duty, when the rent becomes due, to find out the lessor wherever he may be and pay or tender it to him. This will be referred to more in detail later (see *post* "Covenant to pay rent").

Reservation of rent in leases of settled land.—In leases by tenants for life under the Settled Land Acts, it is important to note that the best rent must be reserved that can be reasonably obtained (Settled Land Act, 1882, s. 7). But in the case of agricultural leases, to which the

Agricultural Holdings Act, 1883, applies, the "*best rent*" may be calculated without taking into account against the tenant any increase in the value of such holding arising from improvements on the holding made or paid for by such tenant (Agricultural Holdings Act, 1883, s. 43).

N.B.—This provision of the Agricultural Holdings Act applies in every case of an agricultural lease in which, either under any Act of Parliament, or deed, or instrument, the "*best rent*" is required to be reserved.

Again, by the Housing of the Working Classes Act, 1890, s. 74, leases by tenants for life, under the Act, of land for the purpose of erecting dwellings for the working classes, may reserve such a rent as, having regard to such purpose and to all the circumstances of the case, is the best that can reasonably be obtained, notwithstanding that a higher rent might have been obtained if the land were leased for another purpose.

As to reserving the "*best rent*" on building leases granted under the Settled Land Acts, see *re Chawner*, 1892, 2 Ch. 192.

"*Best rent*" means the best rack rent that can reasonably be required by the landlord, taking into account all the requisites of a good tenant for the permanent benefit of the estate.

It will be a question of fact, to be determined

in each case, whether the "best rent" has been reserved—a consideration which should be borne in mind in fixing the rent in leases of this kind.

It is necessary to reserve the *best rent* during the whole of the term. In reserving the best rent in leases under the Settled Land Acts, no fine or premium may be taken ; but in leases of settled land made pursuant to powers in the settlement "usual fines" may be reserved ; and, if the tenant for life be empowered by the settlement to make leases with or without fines at such rent as he thinks proper, he may grant a lease without any reservation of rent at all.

Reservation of additional rent by way of penalty or liquidated damages.—It is common in the case especially of agricultural leases to reserve an additional rent in case of breach by the tenant of some particular covenant or condition in the lease. This must be distinguished from the reservation of a *penalty* on breach of covenant. A penalty is not viewed with favour by the Courts, and though it may be proved to have been incurred, the lessor will only be entitled to recover the actual damage which he has suffered, and this in some cases may be merely nominal. Thus, if a document provide for one payment on breach of all or *any one* of a number of stipulations varying in importance, this would

probably be regarded as a penalty (see *Kemble v. Farren*, 6 Bing. 141). But where a particular covenant provides for an agreed sum to be paid on a breach of it, such a sum is "liquidated damages" and payment of it will be enforced strictly according to the letter of the agreement. Such are reservations of increased or additional rent on breach of certain covenants. "Thus, where a tenant covenants or agrees not to plough up any of the ancient meadow or pasture ground, and that if he does so he will pay an additional yearly rent of £5 per acre; or that he will pay an additional specified rent per acre and so on in proportion for every acre had in tillage beyond a certain quantity; or that he will not sow more than seventy acres with clover in one year, and, if he does so, will pay an additional rent of £10 for every acre above seventy for the residue of the term; or if the lease contains a stipulation that for every acre and so in proportion for a less quantity which the lessee shall suffer to be occupied by any other person without the consent of the landlord an additional rent shall be paid; in these and similar cases the additional sums reserved become recoverable, when once the particular stipulation is broken, for the remainder of the term. Where a tenant held under a demise upon the terms not to sell any hay produced on the demised premises off the said premises

‘under the penalty of 2s. 6d. for each yard of the said hay so sold as aforesaid to be recovered by distress as for rent in arrear,’ it was held that although this was not strictly a rent it was not a penalty, but an agreed sum recoverable by distress as for rent” (Woodfall, L. and T., 16th ed., p. 419).

Where a lessee agrees to pay an increased rent as liquidated damages for breach of a particular covenant, he cannot usually be restrained by injunction from committing such breach; for he has, so to speak, purchased the right to commit it on payment of the amount of the increased rent. But a proviso for re-entry on breach of covenants generally, may be exercisable, notwithstanding a stipulation for the payment of an additional rent on breach of a particular covenant (see *Weston v. Metropolitan Asylums District*, 9 Q.B.D. 404). In this case it was held that on the wording of the lease as a whole, the lessors had the option either of re-entering or of claiming the additional rent.

An important *practical* difference between a penalty and liquidated damages is that the latter, *e.g.*, in the shape of increased rent, may be distrained for, as well as recovered by action, while the former can only be sued for; and then the sum recoverable will, as already mentioned, be the amount of the actual damage

suffered, which is not necessarily the same as the amount of the penalty.

The question whether a sum agreed to be paid by way of additional rent was a penalty or liquidated damages was discussed in the recent case of *Willson v. Love* (L.R., 1896, 1 Q.B. 626). There the lease of a farm contained a reservation of additional rent in the following terms:—"And also yielding by like half-yearly payments the additional rent of £20 for every acre (and so in proportion for any less quantity) of pasture or meadow land which shall, during the said term, be broken up or converted into tillage without the previous consent in writing of the lessor; and the additional rent of £3 per ton, by way of penalty, for every ton of hay or straw which shall be sold off the premises during the last twelve months of the tenancy, provided also that for every ton of hay or straw so sold off the premises before the last and hereinbefore mentioned twelve months the lessees shall bring an equivalent in manure on the land." There was a covenant that the lessees would not during the last twelve months of the term sell or dispose of or carry away any hay, straw, grass, clover, turnips, or fodder which should grow upon or be produced from the demised premises, or any part thereof, but would spend and consume the same upon the premises. Hay was sold off the premises during the last year of the term. In an action

to recover the £3 per ton it was held that having regard to the difference in the manurial value of hay and straw—that of the former being from 15s. to £1 per ton, while that of the latter was 4s. to 5s. less—the sum of £3 per ton must be regarded as a penalty, and that only the manurial value of the hay was recoverable. In other words, the same sum was made payable as compensation for breach of the stipulation with regard to hay as for breach of that with regard to straw; and this, according to the test adopted, would stamp it as a penalty—notwithstanding that the lease spoke of it as *rent*. Moreover, the parties themselves called it a penalty, and, though the use of this word was not conclusive, it was not to be disregarded, and threw the onus of proving that it was payable as liquidated damages on those who sought to make that out.

Where a lease reserves a sum as rent with an additional rent for over tillage, the acceptance of the former with knowledge of a breach which renders the latter payable will not *per se* amount to a waiver of it.

Apportionment of Rent.

It may be convenient to refer here to the subject of Apportionment of Rent. This takes place in two ways, *i.e.*, either in respect of *estate* or of *time*.

(a) Apportionment in respect of *estate* would occur where the tenant is deprived of possession of any part of the demised premises, *e.g.*, through eviction by title paramount, or by forfeiture or surrender. In such case the rent, which would properly issue out of the whole and every part of the property demised, will be apportioned, and the tenant will henceforth be liable only to pay a rent proportionate to the part left. So if the reversion to part be assigned, the assignee will only be entitled to a proportionate amount of the rent reserved in respect of the whole. As to apportionment of *conditions* in a lease, see Conveyancing Act, 1881, s. 12.

Apportionment of rent in respect of estate also occurs where by act of law, as distinguished from that of the parties, the lease becomes inoperative as regards any part of the land demised, or any part of it is destroyed by act of God.

(b) Apportionment in respect of *time* takes place where, *e.g.*, a person for the time being entitled to the rent received on a demise dies between two rent days. Here the rent is apportioned at such death, and the person who next becomes entitled to the rent can only claim the portion of it from the date of such death to the next rent day. So if a reversion be assigned between two rent days, the rent is apportioned between the assignor and the

assignee. But the apportioned part up to the death of the deceased cannot be claimed until the whole next rent has become due and payable under the lease; and moreover, the tenant cannot be resorted to for the apportioned part, but the whole is payable to the person who would, if no apportionment had taken place, have been entitled to the whole of the next rent, *i.e.*, the heir or successor, and the apportioned part shall be recoverable only from him, and not from the tenant. See the Apportionment Act, 1870, s. 8, the provisions of which apply to any leases, whether in writing or not, but not where it is expressly excluded by a stipulation to that effect (s. 9).

Notwithstanding the provisions of this Act it has been held that, where a tenancy is determined otherwise than by the wrongful act or default of the lessor in the middle of a term, a sum proportioned to the time actually occupied by the tenant is recoverable from him (*Swansea Bank v. Thomas*, 4 Ex. D. 94). Again, if a company, being tenant of any property, goes into liquidation between two quarter days, the landlord may, when the full rent has become due, prove for a proportion of the rent due down to the commencement of the winding up (see *re South Kensington Stores*, 17 Ch. D. 161), though he cannot petition as creditor for an apportioned part of the rent in the middle of the quarter (*re United Club*, 60 L.T. 665).

In case of a tenant becoming bankrupt, if the receiving order is made in the middle of a quarter, the person entitled to the rent may prove for a proportionate part thereof up to the date of the receiving order. This is, however, by virtue of a special provision in the Bankruptcy Act, 1883 (see Sched. 2, r. 19).

As to the liability of an assignee of a lease assigned in the middle of a quarter for a proportionate part only of the rent from the time of assignment, see *in re Wilson*, 62 L.J. Q.B. 628; *re Howell*, 1895, 1 Q.B. 844.

The Covenants to be performed.

In addition to the reservation of rent a lease usually contains an express covenant by the lessee to pay it, and also other express covenants on his part with regard to the user and preservation of the demised premises.

Meaning of "Covenant."—The term covenant occurs so frequently in writing of leases that it may be convenient here to devote a few words to a consideration of its legal significance. A covenant means simply an agreement to do or not to do something, or a warranty that something has or has not been, or shall or shall not be done. The term is usually understood to mean a stipulation contained in an instrument under seal. No special form of words is required; anything showing an agreement between the

parties is in law a covenant. It may even be contained in the *reddendum*, viz., "yielding and paying," etc., or in a *recital* or in a *proviso*, unless it clearly appears that such proviso is a *condition* merely. For instance, if the lessee covenants to repair provided the lessor finds timber, this does not amount to a covenant by the lessor to find timber, but is merely a condition precedent to the lessees' covenant to repair. On the other hand, if the lessor agrees to repair "the premises, being previously put in repair by the lessor," this, it seems, is a covenant by the lessor to repair. The distinction is, it must be admitted, very difficult even for a lawyer to draw, but it is desirable to note it, as by careful attention to the point a lessor may save himself from incurring a liability which, perhaps, he never contemplated. One of the commonest instances of the distinction drawn above between a covenant and a condition is afforded by the well-known case of *Treloar v. Bigge*, 1874 (L.R. 9 Ex. 151). There the tenant covenanted not to assign the premises without the landlord's consent, "such consent not being arbitrarily withheld." In an action by the tenant against the landlord for refusing his consent to a proposed assignment, it was argued that the words quoted amounted to a covenant by the lessor not to arbitrarily withhold his consent. But it was held that the words in question

merely qualified the tenant's covenant and left him at liberty to assign without such consent if it was arbitrarily withheld. This is a useful case to remember, as it covers a point of very common occurrence, and one on which a good deal of misapprehension exists.

Interpretation of Covenants. — The interpretation of covenants in leases has produced a number of decisions illustrating the subtlety of our law and yet important to note for the results depending thereon. For instance, while an affirmative covenant to plough the demised premises except a certain portion has been held to be a covenant not to plough the portion excepted, a negative covenant not to use premises for any other than a certain purpose has been held not to import a covenant to use them for that purpose. Or again, a covenant may have an alternative effect, such as those we have already noted, which provide for the payment of additional rent on breach. A covenant of this kind may operate to allow the covenanting party to commit the breach on payment of the stipulated sum, or he may incur a forfeiture of his lease by committing a breach, notwithstanding the stipulation (see *ante*, p. 100).

Dependent and Independent Covenants. — The question sometimes arises whether covenants are to be considered as independent or not. For instance, if one party covenants to do one thing,

the other party doing another, the two covenants are independent, one is not a condition precedent to the other. The general presumption of law on this point is that covenants will be treated as independent of each other unless it is perfectly clear that one is intended to be dependent on the other. The following covenants have been held to be absolutely independent :—

(i.) A covenant by the lessee to repair “having or taking in and upon the said premises sufficient house-bote, etc. (*i.e.*, wood for repairing the house), without committing any waste.” This is an absolute covenant to repair, with a license to the lessee to take sufficient house-bote, etc., and the finding of such house-bote is not a condition precedent to the lessee’s liability.

(ii.) A covenant by the lessee to repair and keep in repair “being allowed rough timber on the premises, to be fetched at the lessee’s expense.” The furnishing of such timber by the lessor is not a condition precedent to the lessee’s liability.

(iii.) A covenant by the lessee to repair and glaze windows and trim hedges, etc., when necessary, “the said premises being previously put in repair by the lessor.” These words have been held to amount to an absolute and independent covenant by the lessor to put in repair.

(iv.) Again, to take a very common instance,

a lease contains a covenant by the tenant to repair, generally followed by a proviso empowering the landlord to enter and view the state of repair and to give notice of want of any repair to the tenant, and a covenant by the tenant to repair within three months after such notice. Here are two distinct and independent covenants. The tenant may be liable to an action for breach of the general covenant, though the time fixed for repair by the particular covenant has not expired; but if the landlord has given notice to repair within the time specified in the particular covenant, he cannot until the expiration of such period treat the breach of the general covenant as entitling him to take advantage of a proviso for re-entry on breach of *any* covenant; for by giving notice he has waived his right to enforce the forfeiture (see per Bayley, J., in *Doe v. Meux*, 4 B. and C. 609).

Such a case must, of course, be distinguished from that where there is a covenant to repair at all times, when necessary, and "at farthest within three months after notice"; for this is one entire covenant, the former part of which is merely qualified by the latter.

(v.) The lessee agrees to spend a certain sum on repairs, to be approved by the lessor, and the lessor agrees that the lessee shall be allowed to retain such sum out of the first quarter's rent. The approval of the lessor is not a con-

dition precedent to the tenant's right to retain the amount out of the rent.

The following cases of *dependent* covenants may be noted.

A covenant to spend a sum on repairs under the direction or with the approval of a surveyor to be named by the lessor. Here the surveyor must be appointed before the lessee becomes liable to expend the money.

Again, in the common case where, after the usual covenants, there is a proviso that the lessee, on giving a certain notice, may determine the lease at an earlier period than that fixed by the habendum, and that after the expiration of the notice and the payment and performance by the lessee of all rent and covenants due, the lease shall be determined. Here the payment and performance of rent and covenants and not the giving notice merely by the tenant, is a condition precedent to the lessee's determination of the term. For a fuller discussion of this difficult subject see Woodfall, L. and T. (16th ed.), pp. 177-181, and the numerous cases there cited.

Joint and Several Covenants.—In the case of covenants made *by* and *with* more than one person, questions sometimes arise as to whether their operation is joint only or joint and several. The result of much learned disquisition appears to be this: that whether a covenant made *with* several persons enures to their joint benefit

only, or may be enforced by them jointly and severally as well, depends, in the first place, on the words used.

If it is clear from the language of the covenant that it is made with the covenantees jointly, then it will be so construed, although their real interest in the covenant may be several, and the converse of this holds good. The practical distinction between the operation of a covenant, according as it is joint only or joint and several, may be thus illustrated, viz., assuming the covenant to be joint only—on the death of one of the joint covenantees the benefit of the covenant goes to the survivors, to the exclusion of the representatives of the deceased. Again, while joint covenantees must all sue on a joint covenant, if the reversion of a single lessor becomes transferred to two or more persons *as tenants in common*, each can sue individually on the covenant (see the case of *Roberts v. Holland*, 1893, 1 Q.B. 665). In the next place, if the language of the covenant is ambiguous, then the benefit of it will be in the covenantees either jointly or severally, according to their interest therein.

Taking now the converse case of a covenant by two or more persons. The effect of this will be to impose a joint or joint and several liability on the covenantees according, in the first place, to the express wording of the covenant. If they purport to covenant simply,

the obligation is joint only ; if they purport to bind themselves *severally*, the obligation is several only ; if they purport to bind themselves jointly and severally, or to bind themselves and each of them, or covenant for themselves and each of them, the obligation is both joint and several.

But, although the obligation of a covenant may be joint, yet each joint contractor becomes liable, ultimately, to the covenantee for the whole, and not only for his proportionate part. He is, however, presumptively entitled to contribution from the other joint contractors, and therefore, if sued separately, he may apply to the Court to have the others joined with him as co-defendants in the same action, so as to get them bound by the same judgment.

If the wording of a covenant by two or more lessees be ambiguous, the obligation may be construed to be joint or several, according to the interests of the parties appearing on the face of the deed. This rule does not, however, seem to be so clearly established as regards joint covenantors as in the case of joint covenantees (see *White v. Tyndall*, 13 App. Ca. 268). The whole subject is extremely technical and of great difficulty.

Liability of covenantor continues notwithstanding assignment.—The liability of a lessee who has entered into an express covenant continues

throughout the term of the lease, notwithstanding assignment by him of his interest as lessee. Though the privity of *estate* between lessor and lessee constituted by the lease is gone by the assignment, the privity of *contract* remains. The relative positions of lessor and lessee and assignee as regards the operation of the lessees' covenants after assignment will be considered in detail in a later part of this work, where also we shall deal with the important subject of "Covenants running with the land" (see *post*, "Change of parties to the tenancy").

Void Covenants.

A covenant must not be to do anything contrary to law or to public morality or policy, otherwise it will be void, and of no effect. For instance, in a lease of a brewery, a covenant by the lessor not to carry on or be concerned in the business of a brewer during the continuance of the lease would be void as being in general restraint of trade.

Again, if the lease is made for a purpose which is illegal, all the covenants, though in themselves lawful, would be void. Thus, where a lease was granted for the express purpose of the premises being used to carry on a business contrary to a Building Act, it was held that neither the covenant to pay rent nor any of the other covenants in the lease could be

enforced. It is immaterial in such a case, whether the illegal object of the lease appear on the face of it or be proved by extrinsic evidence, for such evidence does not contradict the written contract expressed in the lease, but only shows the object for which it was entered into (per Abinger, C.B., in *The Gas Light and Coke Company v. Turner*, 6 Bing. N.C. 328).

Again, a covenant to do an impossibility is void if the thing agreed to be done is impossible at the time when the covenant is made, but not if it becomes afterwards impossible of performance.

For instance, a covenant is broken before the lease is executed, though subsequently to the date of the *habendum*. Here it is obviously impossible for the covenantee to commit a breach of a covenant not yet in existence, and therefore his liability in respect of such breach only commences from the date of the execution of the lease.

Positive and Negative Covenants.

Covenants may be either positive or negative. Positive covenants by the lessee would be the following, viz.:—To pay all rates, taxes, assessments, etc., payable in respect of the premises; to repair and keep in repair the premises; to insure them against loss or damage by fire; (in farming leases) to cultivate

the land according to a certain system of husbandry or local customs; and (in mining leases) to work the mines and quarries, etc.

Negative covenants by the lessee would be the following, viz., not to assign, underlet, or part with the premises; not to carry on upon the premises any offensive trade or business likely to interfere with or depreciate the value of the premises; not to commit any waste or destruction of the premises.

The only usual covenant by the lessor is one "for quiet enjoyment"—that is, that the lessee, so long as he carries out his part of the agreement, shall have quiet possession without disturbance during the term of the lease.

Implied Covenants.

The covenants above mentioned are all express, and we shall, in a later chapter, deal in detail with each of them. But, even without special stipulation, certain covenants are *implied by law* in every lease on the part of lessor and lessee. They are, however, of a limited character. The only implied covenants in a lease on the part of the *lessor* (and these not in all cases) are:—(1) A covenant for title; (2) a covenant that the lessee shall have quiet enjoyment of the premises during the term; (3) a covenant that the premises are in good repair and fit for occupation.

On the part of the *lessee*, the law implies a covenant to repair and keep in repair to some extent—and (in an agricultural or farm lease) a covenant to cultivate in a husbandlike manner according to the custom of the country.

Where an implied and an express covenant both embrace the same subject matter, the express covenant will displace the implied one.

(1) *Implied Covenant for Title by the Lessor.*—It is doubtful whether there is any covenant for title—*i.e.*, that the lessor has the right to grant the lease—on the part of a lessor implied by the mere use of certain words in the lease. It is stated, for instance, in some of the text books that the word “demise,” and that word only, has the effect of implying a covenant for title. But this has been recently doubted (see *Baynes v. Lloyd*, 1895, 2 Q.B. 616, where it was intimated that the covenant (if any) implied in a lease by the use of the word “demise” was one for quiet enjoyment only, and not for title). In any case, the rule only applies to leases under seal. Moreover, any such implied covenant is, in effect, nullified or excluded by the express qualified covenant for quiet enjoyment (see as to this, *post*, p. 130), which is usually inserted in the lease (see per Bowen, C.J., in *Clayton v. Leach*, 41 Ch. D. at p. 107); or, again, it may be expressly limited by a stipulation, *e.g.*, on granting an underlease, that the lessor lets only

subject to the same terms as those on which he himself holds from his own landlord. To protect the lessee from any defect of title, he should obtain an express covenant for title, though in practice the lessor never gives this. But if there be no such express covenant, the lessee may be precluded from objecting to a want of title in the lessor where he has either actual or constructive notice of such defect. Every person who takes a lease is deemed by law to have constructive notice of his lessor's title. He is, as it were, put upon enquiry into that title, and if he chooses to dispense with any special stipulation with regard thereto, he must take the consequences of any defect afterwards appearing, on the principle of *caveat emptor* (see *Patman v. Harland*, 17 C.D. 353; *Clayton v. Leach*, 41 C.D. 103). But in the case of an *agreement* to grant a lease, there is an implied undertaking by the lessor that he has a good title to let at the time when the lease is to take effect (see *Stranks v. S. John*, L.R. 2 C.P. 376).

(2) *Implied Covenant for Quiet Enjoyment by the Lessor*.—A covenant by the lessor for quiet enjoyment, that is, that the lessee shall not be disturbed in his possession, is implied in every lease, whether under seal or not, though such a covenant ceases with the estate of the lessor and does not necessarily continue during the term

expressed to be granted (see *Baynes v. Lloyd*, 1895, 2 Q.B. 610); whereas an *express* covenant would continue until the end of such term. The benefit of an implied covenant passes to the assignee of the term; but if the term ceases on the death of the lessor, his executors and administrators are not liable on such implied covenant to a lessee subsequently evicted.

An implied covenant for quiet enjoyment means that the lessor guarantees the lessee against *lawful* eviction, entry or interruption by any man, but not against a wrongful eviction, etc., because, in respect of such, the lessee can sue the wrongdoer (see "Platt on Covenants," p. 313).

No right of action on a covenant for quiet enjoyment, whether implied or express, can be brought by the tenant before he is actually in possession, what is called an *interesse termini* not being sufficient for that purpose (see *Wallis v. Hands*, 1893, 2 Ch., at p. 83).

Again, a covenant for quiet enjoyment does not imply that the tenant shall be protected against loss of enjoyment through fire; and therefore, where the premises are burnt, the landlord is under no obligation to rebuild them; nor again, where, as is common, the tenant's covenant to repair contains an exception in case of fire, does such exception imply any undertaking on the part of the landlord to make good any loss occasioned by fire.

(3) *Implied Covenant by the Lessor that the Premises are in Good Condition.*—The general rule is that there is no covenant implied by law on the part of a lessor that the premises, if a house, are fit for habitation, or, if land, are fit for cultivation; nor, in case of a house, does a lessor undertake that it will last during the term, or that he will do any repairs to it. These must be the subject of express stipulation between the parties.

Qualification of this Rule.

This rule must be accepted subject to the following qualifications:—

(a) In the case of a *furnished* house or apartments, it is an implied condition* of the contract of tenancy that the premises are at the commencement of the tenancy in all respects reasonably fit for occupation. It is a condition going to the root of the contract, and if not fulfilled, *e.g.*, if the premises prove to be uninhabitable, either through bad drainage, infection, vermin, defective water supply, or

* This implied condition is often called an implied covenant on the part of the landlord, and for convenience of arrangement I have treated this subject under the head of implied covenants by the lessor. It will be seen on perusing the text that it is not, properly speaking, a *covenant* but a *condition*. The confusion between covenant or warranty and condition is very great in all the authorities and it is difficult to make the distinction clear. It is hoped, however, that the reader will be enabled to appreciate such difference as undoubtedly does exist.

other cause, it gives the tenant the right to repudiate it altogether. The leading case establishing this proposition is *Wilson v. Finch Hatton* (L.R. 2 Ex. D. 336), the facts of which were shortly as follows: The defendant agreed to take a furnished house in Wilton-crescent for about three months. Before taking possession she discovered that the drainage was defective, and thereupon she refused to occupy. The landlord at once repaired the defects and tendered the house in a proper condition to the defendant about a fortnight after the time fixed for going into possession. She still declined to occupy or to pay any rent. In an action for the rent the defendant successfully pleaded that the agreement was made upon the implied condition that the house should be fit for habitation on the day when the tenancy was to begin, whereas it was not. It was pointed out by the Court that it was a condition precedent, and not an implied covenant, giving a counterclaim for damages to the tenant. This condition is sometimes treated as a covenant on the part of the lessor, but it is not so, and the practical differences between treating it as a covenant and as a condition are not inconsiderable. If, for instance, it were a covenant, the landlord might sue for his rent, and the tenant, if driven to counterclaim for damages for breach of such covenant, might be considerably worse off than if he were entitled to repudiate the contract

altogether. It seems, however, that the tenant is not bound to repudiate it, the contract not being void *ab initio*, but voidable at the election of the tenant; and if, having this option, he does not repudiate the tenancy, but continues to occupy, it seems that he can only then treat the condition as a warranty, and sue for the damages occasioned by the breach thereof, or if sued for the rent, counterclaim in respect of such damage. See the case of *Charsley v. Jones* (53 J.P. 280), where the tenant of a furnished house recovered damages against the landlord for losses in consequence of illness through the defective drainage of the premises; and compare *Walker v. Hobbs* (23 Q.B.D. 458), where the "implied condition" on letting unfurnished houses to working class tenants was treated as a "promise" by the landlord entitling the tenant to an action for damages.

Again, assuming a tenant has gone into occupation of a furnished house, and after being in some time has found out defects which must have existed at the commencement of the tenancy, but were not necessarily discoverable before he found them out: Can he so repudiate the contract as to avoid liability for rent for the time already occupied, or if he has paid it can he recover it? It is submitted that he cannot in either case, because the contract is not absolutely void *ab initio*, but voidable only, and until the tenant elects to avoid it, it is valid and

enforceable against him. In *Smith v. Marrable* (11 M. and W. 5) (the well-known bug case) the tenant discovered the existence of the bugs almost immediately after going into occupation, and she stayed a week and then quitted without notice, paying, however, for the week she had occupied. It is submitted she was right in paying for that week, as she did not throw up the contract until the week had elapsed, and would, it is conceived, have been liable up to that day for the rent. The point, however, does not appear to have been yet expressly decided.

It seems to be immaterial whether the house or apartments be taken for a long or short period. See Woodfall, L. and T., 16th ed., p. 184 and note (*l*)—where he treats this implied condition as an implied covenant by the lessor; but see *Wilson v. Finch Hatton* (2 Ex. Div., per Pollock, B., at p. 345). The difference between them has already been explained (*ante* p. 120). Again, even if the tenant expressly agrees to keep the premises in repair this does not prevent him relying on the implied condition that the premises were in good repair at the commencement of the term (see per Pollock, B. in *Wilson v. Finch Hatton* at p. 345), and therefore if the defect appear subsequently as the result of a state of circumstances existing at the commencement, but not reasonably discoverable before it was, in fact, found out, the

tenant, it is submitted, would nevertheless be entitled to rely on such defect as a ground for throwing up his tenancy as from that time.

But this must be distinguished from the case where the premises become insanitary or out of repair owing to some cause arising after the tenancy has commenced. Such a defect is outside the condition referred to (see *Sarson v. Roberts*, 1895, 2 Q.B. 395).

(b) *Implied Obligation on Lessor under Public Health Acts*.—Where premises, whether furnished or not, are, or become *structurally* defective, *e.g.*, in respect of drainage so as to cause a nuisance or to be dangerous or injurious to health, the tenant has, under the Public Health Acts, a chance of making the landlord responsible for their repair, or the cost thereof, even in the absence of any express stipulation on the landlord's part to do repairs. Thus, under the Public Health Act, 1875, ss. 94 *et seq.*, the expenses of repairing structural conveniences pursuant to a notice by a local authority fall upon the landlord, though the tenant may, in the first instance, be called upon by the local authority to pay them. He is then authorised to deduct the amount from his rent unless he has covenanted in his lease to bear such expenses. There is a similar provision under the London Public Health Act, 1891, ss. 4 *et seq.*, in case of any defect of a structural

character. The tenant should be careful not to execute the structural repairs himself, thinking to recover them afterwards from the landlord. If, for instance, he receives a notice addressed to the owner requiring structural repairs to be executed he should forward the notice to the landlord and leave him to do them; otherwise, if, as in *Thompson and Norris Manufacturing Company v. Hawes* (73 L.T. 369) he takes upon himself to do them, he may be unable afterwards to recover the amount or to set it off against his rent. He will have incurred the expense voluntarily and therefore be without remedy.

(c) *Implied Condition on Letting Unfurnished Premises to the Working Classes.*—By the Housing of the Working Classes Act, 1890, s. 75, in any contract for letting an unfurnished house or part of one for habitation to persons of the working classes, there is an implied condition that it is at the commencement of the holding in all respects reasonably fit for human habitation. Letting for habitation to persons of the working classes means letting at a rent not exceeding £20 in the Metropolis, £13 in Liverpool, £10 in Manchester or Birmingham, and £8 elsewhere in England.

It has been held that s. 14 of the Housing of the Working Classes Act, 1885, of which this section is a reproduction, creates

something more than a condition precedent giving the tenant the right to repudiate the tenancy on breach of such condition—that it raises an implied promise on the part of the landlord to provide the tenant with a safe habitation and that if he does not do so the tenant can sue him for damages for any injury resulting from the breach of such implied promise (see per Lord Coleridge, C.J., in *Walker v. Hobbs*, 23 Q.B.D. 458).

From this it would seem that the phrase “implied condition” has not quite the same meaning in this section as that which it has as used in *Wilson v. Finch Hatton* (*sup.*) with regard to contracts for letting furnished houses. In the latter case, the tenant certainly has a right to repudiate the contract on breach of the condition, but whether he has also a right to sue for damages is doubtful.

It seems to be open to either party to the contract to stipulate that s. 75 shall not apply to the holding created thereby.

(d) *Implied Covenant by Lessor not to Derogate from his own Grant.*—On the general principle that a grantor may not derogate from his own grant, a lessor impliedly covenants that he will not do anything to interfere with the objects for which the lease was specifically granted (*Aldin v. Clarke*, 1894, 2 Ch. 437); and, by the same

rule, he cannot, if sued for committing an injurious act or a nuisance to the premises, plead that they were, at the time of letting, in a weak condition to the knowledge of the tenant, and that if they had been then in an ordinary state they would not have suffered from the act complained of. In such a case it seems the measure of damages to which the tenant is entitled is not only the value of the term lost, but also all loss which has happened to him as a natural consequence of the landlord's wrongful act—such as the expense of removing his business (*Grosvenor Hotel Company v. Hamilton*, 1894, 2 Q.B. 836).

The implied covenant of the lessor not to interfere with the particular enjoyment of the premises which he has demised for a particular purpose, *e.g.*, the carrying on of a business, will not extend so as to protect the tenant in the carrying on of some special branch thereof not contemplated by the lessor and requiring extraordinary protection (*Robinson v. Kilvert*, 41 Ch. D. 88).

Implied Covenants by the Lessee.

There is always an implied covenant on the part of the lessee to use the premises in a proper tenant-like manner, which means in the case of a *house*, etc., to do some repairs, and in the case of a *farm* to cultivate in a

husbandlike manner according to the custom of the country. The question is chiefly important in case of yearly tenancies, as leases for terms of years practically always contain express covenants which supersede any implied ones to the same effect.

(a) *Implied Covenant by Lessee to Repair.*

(i.) *In case of leases for terms of years.*—A tenant for a term of years, whether there be any express covenant or agreement, or not, as to repairs, is liable for “permissive” as well as “voluntary” waste (as to the meaning of waste, see *post* “*Covenant to Repair*”), but not, in the absence of special stipulation, for damage by accidental fire. His implied covenant is not to commit or permit waste. This is not quite the same as an implied covenant to repair, though it, to some extent, covers the same ground (see as to this *post*, “Waste”). The obligation in the case of a tenant for years may be summed up in the phrase to use the demised premises in a tenant-like manner.

(ii.) *In case of yearly tenancies.*—A yearly tenant (including in this phrase a person who holds on a yearly tenancy implied, *e.g.*, by being in possession under a void lease, or by holding over after the expiration of a term) appears to be liable to keep the premises at any rate wind and water tight—but how far his obligation extends beyond this has not

yet been precisely determined, and the decisions are conflicting. He must not “commit” waste, but is not liable for “*permissive waste*”; and it seems probable that he is not bound to make good mere wear and tear (see Woodfall, 16th ed., p. 637; Foa, L. and T., p. 123 and cases cited).

(b) *Implied Covenant by the Lessee of Agricultural Property.*

In this case there is a covenant implied on the part of a tenant to cultivate in a husband-like manner according to the custom of the country, that is, according to the prevailing course of good husbandry and management in the neighbourhood. For the purpose of this rule a custom need not be shown to have existed from time immemorial, but it must be certain and reasonable, and strictly proved.

The rule applies to all tenancies of whatever duration, whether verbal or written, and whether expressed or implied, *e.g.*, from holding over and payment of rent.

The custom may, however, be excluded by any special stipulation in the lease inconsistent therewith.

“Custom of the country” means custom of the neighbourhood, but does not include one existing only on a particular estate.

The custom may bind the tenant to cultivate to an extent or in a manner not otherwise

obligatory from the mere relation of landlord and tenant. For instance, apart from local custom, a tenant would not be bound to consume hay or straw on the land or to till so much land every year.

The implied covenant of which we are speaking includes an obligation to maintain and repair all hedges and fences and to keep distinct boundaries. Thus a lessee, if owner of adjoining property, must be careful to keep the boundaries of both separate, and so deliver up at the end of the term, otherwise he may have to make good out of his own property any deficiency in that of which he is merely tenant.

For the purpose of repairing fences in pursuance of this obligation a lessee is entitled to take whatever wood he can find on the premises. Covenants as to cultivation by the tenant may also be implied from express words in other covenants, *e.g.*, where a lessee covenants to plough, sow, manure and cultivate the demised premises (except the rabbit warren and sheep walk) in a due course of husbandry; this implies an undertaking not to plough the sheep walk.

Express Covenants in the Lease.

(1) *By the lessor.*—As a general rule the only express covenant in a lease by the lessor is one for quiet enjoyment. We have already discussed

the nature of an implied covenant of this kind (*ante*, pp. 117-118). We need only here say that where there is an express covenant for quiet enjoyment it excludes that which is implied from the mere fact of letting. Moreover, it is of a more limited character, and therefore less protective to the tenant, being usually confined to guaranteeing him against interruption by the lessor or any persons claiming under him. For this reason the lessor nearly always willingly gives an express covenant for quiet enjoyment qualified in the way mentioned; so that he will not be answerable under it for any eviction of the tenant by the real owner or by a mere wrong-doer or by any person, in fact, who does not claim under the lessor.

The covenant in this form will not protect the tenant against, *e.g.*, ejectment by a superior landlord for non-payment of ground-rent or against a distress for arrears of land tax due from the lessor.

Therefore in an underlease the under-lessor should covenant with the under-lessee to pay the ground rent, land-tax, etc.

In order completely to safeguard a tenant, he should, of course, get an absolute and unqualified covenant by the lessor for quiet enjoyment, or should satisfy himself in case of an underlease that his underlease will not involve any forfeiture of his under-lessor's interest.

Otherwise, if he can only get a qualified covenant or neglects to make inquiry, he must run the risk of eviction by title paramount. He may also be restrained by the head lessor from committing breaches of the covenants in the head lease, though they are not contained in the sub-lease.

The covenant is commonly qualified as follows, viz.:—the lessor covenants that the lessee, *paying the rent reserved and performing the covenants*, shall have quiet enjoyment. The payment of the rent, etc., is not a condition precedent to the performance of the lessor's covenant.

If the covenant be unqualified against interruption by the lessor or any other person whatsoever, this will not include the wrongful acts of strangers unless they are expressly named in the covenant.

The lessor commits a breach of the covenant if he does any act which necessarily interferes with the lessee's enjoyment of his lease, even though the act be in itself lawful and but for such covenant unobjectionable, *e.g.*, if he erects a gate on a necessary way leading to a demised field, so as to intercept it, though such gate be on the lessor's own property.

The covenant will not extend to protect the lessee against interruptions of an accidental character, and such as could not have been foreseen by the parties at the time of granting

the lease. Thus the accidental flooding of a leased mine through the striking of a feeder in course of working an adjoining mine by other tenants of the lessor was held not to be within the operation of the covenant (*Harrison, Ainslie and Co. v. Lord Muncaster*, 1891, 2 Q.B. 680). Any substantial interference by the lessor, or parties claiming under him, with the ordinary and lawful enjoyment of the demised premises is a breach of the covenant, though it may not affect either the title to, or possession of, the premises (see *Sanderson v. Mayor of Berwick-upon-Tweed*, 13 Q.B.D. 547).

But a mere temporary inconvenience not interfering with the estate, or title, or possession, *e.g.*, a temporary obstruction rendering access to the premises less convenient than it was, is not a breach of the covenant (see per Lindley, M.R., in *Manchester, Sheffield, etc., Ry. v. Anderson*, 1898, 2 Ch., at p. 401).

Where a tenant is restrained by injunction from committing a breach of a restrictive covenant entered into by his lessor with third parties, though the lease contains no such covenant, and even though the lessee is ignorant of his lessor's covenant, there is no breach of a covenant for quiet enjoyment by the lessor or any person claiming under him; the object of the latter covenant being to secure title and possession to the tenant, and not to guarantee to him that he

may lawfully use the land for any purpose not in the restriction (see *Dennett v. Atherton*, L.R. 7 Q.B. 316).

A common instance of a breach of this covenant occurs in the case of a lease and sub-lease.

If the lessor calls upon the sub-lessee to pay his rent to him instead of to the latter's own immediate landlord, the sub-lessor, and the sub-lessee complies with such request, this is evidence of a breach of the lessor's covenant for quiet enjoyment (see *Edge v. Boileau*, 16 Q.B.D. 117).

Under a covenant for quiet enjoyment the lessor is not bound to rebuild the demised premises in case of destruction by fire, etc., nor is he responsible for a nuisance caused to the demised premises by any act not amounting to physical interference with the possession and user of them.

It has been held also that where a house is let in separate stories, water to which is supplied from a common cistern, the landlord is not, in the absence of negligence, liable under this covenant for injury caused to any of the tenants by leakage from that cistern (*Anderson v. Oppenheimer*, 5 Q.B.D. 602). As to the liability, if any, of the landlord in such a case, see the recent case of *Blake v. Woolf*, 1898, 2 Q.B. 426.

A nuisance by noise committed by the

lessor or his tenants with his concurrence, unless it amounts to a physical interference with the possession of the demised premises, is not a breach of the lessor's covenant for quiet enjoyment, though it may be actionable on other grounds as against the persons committing the nuisance or even the lessors (see *Jenkins v. Jackson*, 40 C.D. 71, where Kekewich, J., explained that "quiet" enjoyment does not mean "undisturbed by noise," but "without interruption of possession").

An express, equally with an implied, covenant for quiet enjoyment is one of those covenants which are said "to run with the land"—that is to say, the obligation of the covenant passes to the assignee of the reversion and the benefit of it to the assignee of the lease.

The liability of the lessor on an express covenant for quiet enjoyment during the term lasts throughout the term expressed to be granted, and not merely during the continuance of the lessor's own interest, as is the case where the covenant is merely implied by law (*vide ante*, p. 117).

Covenant by Lessor to Renew the Lease.—A lease sometimes contains a covenant by the lessor to renew the lease. These covenants are not so common as formerly, and one of the chief difficulties to which they have given rise is the construction

of them, it being often a question whether, where there is such a covenant, the renewed lease is to contain a similar covenant to renew—the effect of which would be to render such leases perpetually renewable. The general rule is that where a lease contains a covenant to renew with a proviso that the lease to be granted shall contain the same covenants and agreements as the lease in which the covenant for renewal occurs, such proviso does not extend to the covenant for renewal. But the general presumption against perpetual renewals may be displaced by clear evidence in the lease that the parties intend a perpetual renewal, *e.g.*, where the covenant is that the lessor will execute the renewed lease subject to the same covenants “including this present covenant” (*i.e.*, to renew). This would amount to a covenant for perpetual renewal, giving the lessee the right to have a similar covenant inserted in the renewed lease, and so on (see *Hare v. Burgess*, 4 K. and J. 45).

A right to renewal of a lease may be forfeited by the lessee not applying for such renewal or failing to tender a new lease, etc., within any time limited for that purpose by the covenant. And where, as is commonly provided, the covenant to renew is dependent on the performance by the lessee of his covenants, a lessee who has not performed them will not be entitled to specific performance of a

covenant for renewal so worded. This is very important to note in this connection, as it nearly always happens that the tenant has committed a breach of, *e.g.*, his repairing covenants, and in two modern cases it has been held that the performance of his covenants is a condition precedent to the tenant's right to renewal. At any rate, it seems he should do any repairs wanted before venturing to ask the Court to grant specific performance of the covenant for renewal (see *Finch v. Underwood*, 2 Ch. D. 310; *Bastin v. Bidwell*, 18 Ch. D. 238). The former of these cases also decided that where there are joint lessees no one of them has an individual right to renewal. Under a covenant to renew, the tenant is not limited as to the time within which he must apply for a renewal unless the covenant expressly so provides.

Renewals by Trustees, etc.—Persons who stand in fiduciary relations to others—*e.g.*, trustees, executors, agents, tenants for life, or other limited owners, persons jointly interested with others, partners, mortgagors and mortgagees cannot take advantage of a covenant for renewal to renew in their own names leases in which such other persons are interested. Should they renew in their own names they would be merely trustees for those interested.

A tenant for life who renews a renewable

lease in his own name will be a trustee for the remaindermen, and if he purchase the reversion it seems he will be a trustee for them (see *Phillips v. Phillips*, 54 L.J. Ch. 943).

Again, a mortgagor stands in a fiduciary relation to the mortgagee and *vice versa*, and neither could renew a mortgage term in his own name, but any such renewal would be deemed to be for the benefit of the other.

A trustee of renewable leaseholds should endeavour to obtain renewals, and he may use trust funds in his hands in payment of any money required for such renewals (see Trustee Act, 1893, s. 19). Persons who take assignments, etc., through trustees etc., who have improperly renewed leases in their own names, are in no better position than those from whom they derive title, even if they be purchasers, at any rate if they have notice of the trust, etc. (see White and Tudor, L.C., 7th ed., vol. II., p. 708).

Where a trustee has improperly renewed a lease in his own name he may be ordered by the Court to assign it to the parties beneficially entitled, and must do so clear of all incumbrances which he may have created thereon; but any underlease granted by him *bona fide* at the best rent will be allowed to stand.

He will, moreover, be entitled to be indemnified against the covenants entered into by him in the lease, and will even have a lien

upon it for the costs and expenses of renewing the lease with interest and for expenses of lasting improvements, against which, however, may be set off any charges in respect of waste and deterioration (2 White and Tudor, L.C., p. 696). If a trustee sells a right of renewal, the moneys produced by the sale will be subject to the same trusts as the leaseholds, if renewed, would have been subject to. See the whole subject of renewals of leases by trustees, etc., discussed at length in the notes to *Keech v. Sandford* (2 White and Tudor, L.C., pp. 694-708).

Option to Lessee to Purchase Reversion.—Another instance of what is, in effect, a covenant by the lessor, occurs where the lease provides that the lessee shall have the option of purchasing the reversion.

Such an option must be exercised strictly within the time (if any) limited in the lease. It passes on the lessee's death to his personal representatives, and if the tenant exercises it after the landlord's death the purchase-money goes to the latter's personal representatives.

An option reserved to a lessee or his assigns is not exercisable by a person who is only an equitable assignee (*Friary Holroyd, etc. v. Singleton*, 1899, 1 Ch. 86). While an executor or administrator may not give such an option to his tenant (see *ante*, p. 34), a tenant for life may grant a building lease containing such an

option (Settled Land Act, 1889, s. 2). Where a tenant has an option of purchase and the lessor has covenanted to insure the premises, any insurance money received by the lessor before the time for exercising the option will belong to him and cannot be subsequently claimed by the lessee, on exercising his option, as part of his purchase. See further as to option of purchase, Foa, L. and T., 2nd ed., pp. 233-236.

(2) *Express Covenants by Lessee.*

The ordinary covenants in a lease on the part of the lessee are the following :—

Positive Covenants.—To pay rent, to pay rates and taxes, etc., to repair and leave in repair, to paint, to insure.

Negative Covenants.—Not to assign, etc., not to commit any nuisance, not to carry on particular trades, etc., on the demised premises.*

There are also special covenants in leases of particular kinds of property, *e.g.*, in farming

* These covenants, though commonly inserted in most leases, are not all "usual" covenants, as that word is technically understood. Thus, in agreements for leases, it is often stipulated that the lease to be granted shall contain the "usual" covenants. The only "usual" covenants in this sense are the following, *viz.*, the ordinary limited covenant for quiet enjoyment by the lessor; and by the lessee, covenants to pay rent and taxes except property-tax and tithe rentcharge; to repair and yield up in repair, and for that purpose to allow the lessor to enter and view the state of repair; but not a repairing covenant containing

leases, as to cultivation ; in mining leases, as to working and getting the minerals ; in brewers' leases, as to dealing only with the lessor, etc.

Again, some of the above-mentioned covenants—*e.g.*, to pay taxes, to repair, to insure—are occasionally undertaken by the lessor instead of by the lessee.

(a) Covenant to pay Rent.

Strictly speaking, no express covenant to pay rent is necessary, as the law will imply a contract to do so from the mere reservation of rent in the lease, *e.g.*, the words “yielding and paying” will of themselves amount to a contract on which an action for rent would lie. Again, even without any reservation of rent or agreement to pay any, a person allowed to occupy premises will be liable to be sued for a species of rent in an action for use and occupation (as to which see *post*, Chapter V.). It is, however, important to have a covenant to pay the rent, as it gives the lessor an additional remedy for its recovery. A remedy, moreover, which is not local, as

an exemption in the event of accidental fire. In special cases, other covenants may be deemed “usual,” either by reference to a particular trade—*e.g.*, in public-house leases—or by custom, and in this connection it may be observed that, where a lease contains a covenant with regard to carrying on certain trades upon the demised premises, a proviso for re-entry if any but a specific trade be carried on may be considered usual, but, otherwise, the proviso for re-entry, which a lessor is entitled to have inserted in the lease, must be confined to the case of non-payment of rent.

is that of distress, and, if the rent be reserved by deed, can be brought within twenty years after the rent became due. Again, while not more than six years' arrears of rent can be recovered by distress, or action for rent not reserved by deed, twenty years' arrears can be recovered in an action of *covenant*, *i.e.*, in a lease under seal. But so long as the relation of landlord and tenant is subsisting, the right to the rent is not barred by non-payment for *any length of time*, though there is a limit to the *amount* of arrears recoverable (Woodfall, L. and T., 16th ed., p. 568).

An action of covenant for rent, though free from many of the technical difficulties which are incident to distress, is comparatively seldom resorted to by the landlord while his tenant is in occupation, as distress is a more summary and effective method of getting the rent. But where the lessee has ceased to occupy, either by himself or a sub-tenant, or there are no distrainable goods upon the demised premises, the action of covenant is the lessor's only remedy, unless he proceeds to recover possession of the premises. It is, therefore, important to note the principal points in connection with this covenant.

A covenant to pay rent binds the lessee to pay or tender it to the lessor wherever the latter may be, provided he is *intra quattuor maria*, whereas a distress for rent must be

made on the demised premises, except in the case of fraudulent removal (see *post*, Chapter VI., "Distress for Rent").

Again, if the landlord distrains he must exhaust that remedy by sale of the tenant's goods before he can sue on his covenant for any balance remaining unsatisfied, and now it would seem to be a good defence to an action of covenant for rent that the rent has been satisfied by a distress.

An action of covenant for rent would be available in cases where the lessee has created by deed a tenancy which in effect amounts to an assignment, and the rent under which is, therefore, not recoverable by distress (see *ante*, pp. 2, 3). And in a similar case, where a tenancy is intended to be created between the parties, though it is not by deed, an analogous action for rent would lie.

As to the *time* when and the *mode* in which rent must be paid, the same considerations seem to arise, whether the discussion be with reference to proceedings by distress or by action on the covenant. We shall deal with these points under the head of "Distress for Rent" (*post*, Chapter VI.).

An action may be brought on the covenant for rent although the landlord has taken security for it in the shape of a bill of exchange or promissory note; and even if he has recovered judgment on the bill or note that is no defence

to an action on the covenant for rent, unless it be shown that the judgment has been satisfied (see further as to this, *post*, p.146).

Defences to Action of Covenant for Rent.

As to the defences which are open to a lessee in an action of covenant for rent, although he is estopped from denying that his landlord had a good title at the time of the demise, he may show that such title has subsequently ceased; also, where the assignee of the reversion is suing, the tenant may dispute his right, as the doctrine of estoppel does not apply as between the tenant and the assignee of the reversion.

The tenant may also plead that he has been evicted — which does not necessarily mean physically expelled. Another defence is that the rent was tendered on the day when it was due. Subsequent tender does not appear to be a good defence for an action for rent.

Payment to landlord or his duly authorised agent, is, of course, a complete defence. What is payment sometimes raises questions; *e.g.*, where rent is remitted by post and the money is lost, or where it is paid by cheque. If rent is remitted by post it is at the tenant's risk, unless the landlord expressly or impliedly authorised payment in that way. Payment by cheque is conditional—that is, it is good until the cheque be dishonoured, the landlord's rights being in the meantime, as it

were, suspended, but on the dishonour they are at once enforceable.*

Payment to Lessor's Agent.—Payment to the landlord's agent is good if the latter has been authorised to receive it, but such authority may be revoked at any time by the landlord, even if the lease provides for payment to be made to the agent during the term, and in that case payment to the agent after notice of revocation of his authority would be bad and could not be pleaded by the tenant as a defence to an action on the covenant.

Payment of Ground Rent, etc., by Tenant.—It is a good defence *pro tanto* to an action of covenant for rent that the lessee has paid ground rent which the lessor ought to have paid, or that the lessee has paid land tax, sewers rates, tithe rentcharge, unless he had by the lease agreed to pay them, but in the case of property tax, payment by the tenant is

* Agents who act on behalf of landlords should be careful as to accepting a cheque in lieu of cash from tenants as they may involve themselves in liability to their principals should the cheque be dishonoured. In *Pape v. Westacott* (1894, 1 Q.B. 272), the landlord's agent was instructed not to part with a license to assign until the lessee paid the rent due at the time of assigning. The agent took a cheque for the rent from the lessee and handed over the license to the lessee in the presence of the proposed assignee. The cheque was dishonoured, and the lessee proving insolvent, the landlord proceeded against the agent and recovered as damages from him, for not following his instructions, the amount of the rent. The tenant was, of course, liable on his covenant, but had disappeared, so that there was no available action against him.

an absolute discharge *pro tanto* of his rent, notwithstanding any agreement by him to pay it (see Income Tax Act, 1842, ss. 60, 73).

Payment in Advance.—If the tenant should pay his rent before it is due, it is a good answer to a claim on the covenant, at least as against the lessor or his legal representatives. But strictly it is regarded as an advance by the tenant to the landlord to be treated as performance of the covenant when the rent has become due. Therefore, if the landlord assigns his reversion, and the assignee gives notice to the tenant before the rent becomes due to pay it to him, the tenant cannot, as against the assignee, plead that he has already paid it in advance to his landlord (see *De Nicholls v. Saunders*, L.R. 5 C.P. 589). But in such a case it would seem that the assignor should indemnify the tenant.

Effect of taking Security for Rent.—Taking security for rent does not *per se* operate to discharge the tenant (see *Davis v. Gyde*, 2 A. and E. 624). It is in every case a question of fact whether it was taken with the intention of discharging him — or, as it is termed, as “an accord and satisfaction.” If so, it suspends the landlord’s right until the bill, etc., is dishonoured, but if the bill was only taken on account of the rent, it does not suspend the right of action during the running of the security. Taking a bill is, however, *some*

evidence of an agreement to suspend the landlord's rights (so held in *Palmer v. Bramley*, 1895, 2 Q.B. 405, explaining *Davis v. Gyde*, *supra*).

Illegality of Contract.—It is a good defence to an action for rent that the whole contract of tenancy was illegal, *e.g.*, that the premises were let for an unlawful purpose ; even though such purpose does not appear in the face of the lease.

Effect of Assignment.—It is no defence to an action on the covenant to pay rent that the lessee has assigned his lease, as the lessor can sue at his option either the lessee or the assignee or both, though he can only enforce his judgment against one. He sues the lessee by virtue of the privity of *contract* between them created by the covenant ; he sues the assignee by virtue of the privity of *estate* between them created by the assignment. But there is no privity either of contract or estate between the lessor and an under-lessee—and consequently the lessee cannot set up such underlease as an answer to the lessor's claim on the covenant.

Effect of Assignment of Reversion.—We have already stated that the lessee can plead in answer to an action of covenant for rent by the lessor that the reversion has been assigned. Thus, where the lessor is suing, the lessee may show that he assigned before the rent

became due, or if the assignee of the reversion is suing, that he became such after the rent accrued due. But if the assignee allow the lessee to continue to pay his rent to his lessor he cannot afterwards set up against him the assignment of the reversion. That is to say, the lessee will be safe in continuing to pay his rent as heretofore, until he has notice from the assignee to pay it to him; and then it is open to him to show that the assignee is not entitled to receive it. But the *title* to the rent accrues to the assignee as from the date of the assignment, and not from the date of notice.

Any particular instalment of rent may be assigned by the lessor so as to give the assignee of it the right to sue the tenant.

Plea of Surrender.—The tenant may also plead that the premises have been surrendered, whether expressly or by operation of law. This is a good answer to any claim for subsequent rent, but not for rent accrued due before, or for the apportioned part due at the date of such surrender.

Where the assignee of the lease surrenders part of the premises to the landlord it has been held that this does not extinguish the liability of the lessee on his covenant, at any rate, to the extent of an apportioned part of the rent; and it is a question whether he does not remain liable for the whole of the rent originally reserved (see *Baynton v. Morgan*, 22 Q.B.D. 74).

Plea of Eviction.—The tenant may plead that he has been evicted either by his landlord or by some third person—in which case no claim for rent subsequent to such eviction can be made. Where he has been evicted from part only of the premises, then if the eviction was by the lessor, the rent is entirely suspended during the time the eviction lasts, the tenancy not being determined ; but if the eviction was by a stranger by title paramount, the tenant is, it seems, at most entitled to be relieved of an apportioned part thereof, as from the date of such eviction.

What Constitutes Eviction.—Eviction does not necessarily mean physical expulsion of the tenant ; any permanent act of the landlord showing an intention to deprive the tenant of possession is sufficient, *e.g.*, without the tenant's consent, letting the premises while empty to another tenant, or accepting rent from another person who has obtained possession, or pulling down or structurally altering them. Again, eviction of a sub-tenant is eviction of the tenant.

The act relied upon as amounting to an eviction must be of a permanent character, and a mere temporary trespass by the landlord is not such a deprivation of possession as will be deemed an eviction.

If the landlord bring ejectment against the tenant on the ground of forfeiture for breach

of covenant, he cannot afterwards sue on the covenant for rent subsequently accruing, but he may recover it in the ejectment action in the shape of "mesne profits."

Eviction of the tenant from part of the premises, though, as already stated, it suspends the entire rent so long as the eviction lasts, does not terminate the tenancy or affect the liability of the tenant on the other covenants.

It is necessary to remember that, in order to establish a plea of eviction, the lessee must show not only that the lessor had wrongfully entered the demised premises without his consent, but has also kept him evicted.

Eviction by a Stranger.—The evicting party must be legally entitled to evict, and the tenant must have quitted the premises involuntarily, though he need not have been forcibly expelled. If the evicting party was a wrong-doer, then the tenant has his remedy against him, but cannot avail himself of a wrongful eviction as a defence to the lessor's action on the covenant. Where a mortgagor grants a lease subsequent to the mortgage, apart from the Conveyancing Act, 1881, then notice by the mortgagee to the tenant to pay his rent to him is not an eviction, unless it be complied with, either by attornment or payment of rent to the mortgagee, when it may be so pleaded to an action on the covenant for

rent by the mortgagor (see *Corbett v. Plowden*, 25 Ch. D. 678).

In case of eviction by title paramount from a part of the demised premises, the rent may be apportioned so that the lessor can recover the proportionate part down to the date of the eviction.

Destruction of the demised premises by inevitable accident is no defence to an action for rent subsequently accruing; and even where the liability for rent was, by agreement, to cease after fire, an apportionment may still be made so as to entitle the landlord to recover a proportionate part down to the date of the destruction of the premises. It is well settled that a proviso in a repairing covenant exempting the tenant from liability to repair in case of loss, etc., by fire does not preclude the lessor from suing on the covenant for rent; nor when he has insured the premises himself and received the insurance money can he be restrained from suing for the rent until the premises are rebuilt.

Even where there is a provision for suspending the rent in case of loss by fire, yet, if the loss be partial only, the rent will be apportioned and the tenant will only be entitled to a *pro rata* reduction; and it seems that a proviso of this kind will be very strictly construed, and unless the loss falls exactly within the

terms of it the tenant will get no relief from his covenant.

As to the special remedy of the landlord for recovery of rent where the tenant's goods have been already seized by a sheriff or County Court bailiff under an execution by some third party against the tenant, see *post*, Chapter VI., "Distress for Rent."

Interest on Rent.

In an action to recover rent, interest may be awarded at a rate not exceeding the current rate, from the time when the rent is payable, if reserved by a written instrument; if not reserved by a written instrument, then from the time when a demand giving notice that interest will be claimed from its date until payment shall have been made in writing (3 and 4 Will. IV., c. 42, s. 28).

(b) Covenant to Pay Rates, Taxes, etc.

Rates, taxes, etc., may be divided into Landlords' Taxes and Tenants' Taxes. The former are those which, as between landlord and tenant, *prima facie* fall on the landlord, while the latter are those which *prima facie* are payable by the tenant. With certain exceptions, to be presently noted, it is open to the parties to stipulate that either landlord or tenant shall bear the whole or part of these. Usually the tenant covenants to pay all taxes, etc., except

those which are by statute imposed solely on the landlord, as to which no covenant by the tenant to pay them has any validity. These are property tax, tithe rent charge and extraordinary tithe rent charge, which must be borne by the landlord, any stipulation to the contrary notwithstanding. Landlord's taxes also include the following, viz., land tax, sewers rates and special assessments under local Acts, all of which, however, may, by agreement, be made payable by the tenant.

Tenant's taxes include poor rates, assessed taxes, *i.e.*, duties on servants, etc., and inhabited house duty ; county, borough, and highway rates ; general district rates under Public Health Act, 1875 ; private improvement rates ; lighting and watching rates ; and water and gas rates. All these, in the absence of express agreement to the contrary, fall upon the occupier, subject to certain rights of deduction to be presently mentioned. Where a tenant covenants to pay rates, taxes, etc., a question often arises as to which of the various assessments above mentioned are included in such covenant, and there have been a great many cases turning on the construction of these covenants. Sometimes the tenant does not in terms covenant to pay taxes, but to pay rent free of any deduction, or else the reddendum is made clear of all taxes, charges, impositions, etc. But in whichever form the

agreement is made, it amounts to a covenant to pay the taxes.

An express covenant is, however, usual. If the covenant is to pay taxes generally, this includes parliamentary taxes, *i.e.*, taxes directly imposed by Parliament for the benefit of the whole kingdom, but not those which are only applicable for local purposes. Thus a covenant to pay taxes or "parliamentary" taxes would naturally include land tax, but not sewers rates, even if the word "parochial" be added, for a sewers rate is neither parliamentary nor parochial, and the same may be said of improvement rates made by commissioners under a local act. County rates are parochial because levied out of poor rates.

A covenant to pay "*all rates, taxes and assessments* which may be assessed or imposed in respect of the demised premises" will include all assessments of a recurring nature, such as land tax; or a temporary assessment, such as a rent-charge payable in respect of enfranchised copyholds, but not—even apart from the Tithe Act, 1891—tithe rentcharge; while it may also be construed to apply to all assessments which are essentially tenant's, *e.g.*, poor rates (Foa, L. and T., 2nd ed., pp. 149-150).

A covenant so worded, or even with the addition of the word "impositions," will not, however, include payments in respect of permanent improvements to the land. These are

of two kinds, viz., payments due to public authorities for work done by the latter for the benefit of the demised premises—*e.g.*, paving expenses in Metropolis, under Metropolis Management Act, outside Metropolis, under Public Health Act, 1875—and payments for work done by public authorities in default of the owner who ought to have done the work himself in the first instance, *e.g.*, expenses of abating structural nuisances under the Public Health Acts, even though the public authority may also recover them from the tenant (see *Tidswell v. Whitworth*, L.R. 2 C.P. 326 ; *Baylis v. Jiggins*, 1898, 2 Q.B. 315). To make the tenant liable for payments of either kind under a covenant to pay taxes, etc., such words as “burdens, duties, charges, or outgoings,” should be inserted, though it has been suggested that the word “duties” may be ambiguous. As to the word “charges,” that will include payments which are made a charge on the premises, but not those for which the landlord is only personally liable, unless as regards the latter, in addition to the word “charges,” some such expression as “imposed in respect of the demised premises, or upon the landlord or tenant in respect thereof,” be added. Without the words “charges, outgoings, or duties,” such expression does not seem to add to the effect of the covenant as against the tenant. And under a covenant to pay all rates and

assessments, taxed, rated, charged, assessed or imposed upon the demised premises, or upon or payable by the occupier or tenant in respect thereof, the tenant was held not to be liable for paying expenses under the Metropolis Management Act, which are imposed on the owner, though recoverable also as a matter of convenience from the occupier, the latter being in his turn entitled to deduct it from his rent (*Allum v. Dickinson*, 9 Q.B.D. 632, *cf. Arding v. Economic, etc., Publishing Company*, 79 L.T. 420).

For cases where the tenant has been held liable for paying expenses under a covenant of this kind, see *Thompson v. Lapworth* (L.R. 3 C.P. 149): followed in the recent case of *Wix v. Rutson* (1899, 1 Q.B. 474).

In order, therefore, to include every possible outgoing the covenant should be expressed as follows, viz., "to pay all rates, taxes, charges, assessments, duties, impositions and outgoings whatsoever, whether parliamentary, parochial, local, or of any other description, which are now, or may at any time be, assessed, charged, or imposed upon the said demised premises or the owner or occupier in respect thereof, except landlord's property tax." A covenant in this comprehensive form will include practically every kind of rate or tax which can be imposed.

If a tenant covenants to pay his rent with-

out deducting taxes his covenant is not affected by a subsequent statute which merely authorises tenants to make such deductions, because it does not *compel* the tenants to deduct, while, on the other hand, the tenant may covenant to pay rates, etc., which by a previous Act he would have been entitled to deduct.

Where a leasehold house is described as held at a "*net*" *rent upon usual and common covenants, the purchaser of it* cannot object that the lease contains a covenant by the tenant to pay land tax, sewer rates and all taxes, such a covenant being usual in a lease reserving a net rent. A covenant in a sub-lease to perform all the covenants in the superior lease will bind the sub-lessee to pay all rates and taxes covenanted to be paid by the lessee including rates for extraordinary drainage and other works.

Questions sometimes arise as to the effect of an increase in the rates caused by the increase in the rateable value of the premises; in such a case, where the tenant covenants to pay the rates, etc., he has to pay the whole of the increased rate; but if the lessor covenants to pay the rates, he is only bound to pay the rate according to the rateable value at the time of the demise (see *Smith v. Humble*, 15 C.B. 321; Woodfall, L. and T., 16th ed., p. 593, and cases there cited).

If the tenant fails to pay rates and taxes pursuant to his covenant, the landlord's

remedy is either to sue him for damages for breach, or if there be a proviso for re-entry on breach of covenant, to bring an action of ejectment.

If, on the other hand, it is the landlord who is liable to pay the rates, etc., then the tenant who has paid them under compulsion is entitled to deduct the amount from his rent—but he must have paid them before he is entitled to deduct. At the same time, he must make the deduction from the current year's rent, for should he omit to do so, he cannot claim it at a subsequent period.

A tenant who is under-rated can only deduct *pro rata* for what he actually pays.

He may not deduct more than would be assessed on the amount of his rent, though he may actually have paid more, and may not deduct more than is proportioned to the rent reserved, though the rate has increased by reason of a subsequent increase in the annual value of the premises (*Smith v. Humble*, sup.).

If the tenant has been erroneously allowed to deduct an amount from the rent he can, nevertheless, plead it as a good defence of payment *pro tanto* in answer to an action on the covenant for rent.

Where the landlord has covenanted to pay the rates and the tenant has paid them, he can nevertheless recover them from the landlord under the covenant.

And again, if the tenant has paid his full rent under a threat of distress, he can recover from his landlord all such rates, etc., as the landlord improperly refused to allow, but he must not, by inadvertence, omit to make a deduction to which he is entitled, at any rate beyond the current year, or he will not afterwards be able to recover it.

It was decided under the Metropolitan Building Act, 1855, that a tenant who had been compelled by the building owner to pay a proportion of the expenses of a party wall for which his (the tenant's) landlord, the adjoining owner, was liable, could recover the amount from the latter by action, and that he was not bound, though entitled, to deduct it from the rent due or accruing due (*Earle v. Maugham*, 14 C.B. N.S. 626). This Act was repealed by the London Building Act, 1894, but it would seem that the same rule applies to the analogous section in the later Act (see s. 173 (5)).

N.B.—Water rate is not a rate for which the landlord would be liable under a covenant to pay all rates, taxes and impositions assessed on the premises or the landlord, or a tenant in respect of them, as the rate is merely the price paid for a supply of water, and therefore voluntary on the part of the tenant (*Badcock v. Hunt*, 22 Q.B.D. 145).

Landlord's taxes are such only as between landlord and tenant; as regards the public the

landlord cannot be made directly liable (*Cumming v. Bedborough*, 15 M. and W. 438).

Particular Rates, Taxes, etc.

Landlord's Property Tax.

This tax is payable in the first instance by the tenant or occupier, who is authorised by the Income Tax Act, 1842, to deduct the amount from his rent; but he must pay it before he deducts it. In the case of a lease and sub-lease, the mesne landlord, who has allowed the deduction from the rent paid by the sub-lessee, is entitled to deduct a proportion from the rent payable by himself to his landlord. A landlord who refuses to allow a deduction of the tax pursuant to the Act is liable to a penalty of £50, while any covenant by the tenant to pay it is simply null and void. It seems, however, that the tenant may covenant to pay an increased rent, subject to reduction in the event of the tax being repealed or reduced. Or the landlord may agree that if the tenant pays the rent in full, without deduction, he will repay him the amount of the taxes.

The tenant may not deduct from his rent more than the amount assessed and actually paid by him.

He is entitled to deduct from any subsequent rent arrears of tax left unpaid by a

former tenant, and which he has been obliged to pay.

When Landlord Primarily Assessable.—In the case of small houses, *i.e.*, of less than £10 annual value—also when premises are let for less than one year, and also in case of tenement houses, the assessment is in the first instance made upon the landlord instead of the tenant, the occupier being only liable in the event of the landlord making default in payment ; but then the occupier in paying the tax may deduct it from the next or any subsequent payment of rent. And now, by s. 10 of the Finance Act, 1898, a landlord is empowered to pay the tax in the first instance, and for that purpose to request the District Commissioners to assess and charge him in the assessment as if he were the occupier, and the duty may be recovered from him as other duties of income tax, but without prejudice to the right of distraining, if necessary, for the duty on the premises in respect of which the assessment was made, as if the occupier had been assessed, with a right for such occupier on payment to deduct the amount from his next or any subsequent payment on account of rent. But the landlord may cancel any such request by written notice to such Commissioners on or before July 31 in any year.

The tax is a poundage reckoned upon the annual value of the premises.

Land Tax.

Unlike the property tax the land tax is one which the tenant may covenant to pay, although it is *prima facie*, as between him and his landlord, a landlord's tax. But as between him and the public it is a tenant's tax. The land tax is a poundage not exceeding one shilling in the pound (see Finance Act, 1896) on the annual value of the hereditaments in each parish, the annual value being determined by the Income Tax Commissioners for the purpose of Schedule A in the Income Tax Act, 1842. It is recoverable by distress and sale, or in default by commitment.* The person liable to pay is entitled to a demand, and reasonable time thereafter for payment before the distress may be made.

In deducting land tax from his rent, where the tenant has not covenanted to bear it, he is not entitled to deduct the whole of the amount paid, but so much only as the rent paid to his immediate landlord bears to the assessed annual value of the demised premises, and such landlord may deduct out of the next rent paid by him to his superior landlord so much of the rate as such last-mentioned rent bears to the assessed annual value of the pro-

* Distress for Land Tax is not a breach of the landlord's covenant for quiet enjoyment.

perty, and so on *toties quoties* (Woodfall, L. and T., 16th ed., 603).

Where the land tax is redeemed by the landlord, the tenant at rack rent who has covenanted to pay it will be liable to pay the amount of the redemption money as rent, and it will be recoverable as such. This only applies where the tax has been redeemed by the tenant's immediate landlord. The tenant may redeem the tax himself. See the provisions of the Finance Act, 1896, as to the redemption of this tax.

Sewers Rate.

A sewers rate may be for ordinary annual repairs or for extraordinary repairs. The former will fall on the tenant; but the latter, which is generally understood by the term sewers rate, is not an annual rate, but a charge in respect of the improvement of the fee simple, and is therefore *prima facie* a landlord's charge. The tenant may, however, covenant to pay it. The tenant usually pays it in the first instance, and then, if he has not covenanted to bear it, he deducts from the next payment of his current rent so much of the rate as his landlord ought to bear.

The sewers rate is not a "parliamentary tax," but is an "outgoing." As in case of land tax, any increase in the rate caused by an increase

in the rateable value of the premises, through new buildings, etc., must be borne by the tenant, even where the landlord has covenanted to pay the rate.

Tithe Rentcharge.

The Tithe Act, 1891, has made a great change in the incidence of the tithe rentcharge. Hitherto the tenant has been liable to be distrained for tithe rentcharge, though not personally liable to pay it. It is a charge on the property. It is true that by the old Tithe Act a tenant paying the tithe was in the absence of contract between him and his landlord entitled to deduct it from his next rent; but now, by the Act of 1891, the tithe rentcharge is payable by the landlord, notwithstanding any contract to the contrary between him and the tenant, except in cases where there is a subsisting contract made before the passing of that Act, *i.e.*, either a covenant in a lease made before 26th March, 1891, or in a lease made after that date pursuant to an agreement made before.

But even in the case of contracts made before the Act, the occupier who has agreed to pay the tithe rentcharge is no longer bound to pay it; sub-s. 2 of s. 1 of the Tithe Act, 1891, absolving him from that part of his contract, and, instead, making him liable to pay to the owner such sum as the latter has properly paid

on account of the tithe rentcharge agreed to be paid by the occupier, exclusive of any costs paid or incurred by the owner in respect of such tithe rentcharge; and the sub-section further provides that every receipt given for such sum shall expressly state that it is paid in respect of that tithe rentcharge.

Where the lands out of which any tithe rentcharge issues are occupied by several occupiers who have contracted to pay the tithe rentcharge, any of such occupiers shall be liable only to pay such proportion of the sum paid by the owner of the lands on account of that tithe rentcharge as the rateable value of the lands occupied by him bears to the rateable value of the lands occupied by such occupiers (*ib.*).

Sub-s. 3 provides that the sum which the occupier is, by sub-s. 2, made liable to pay to, the owner, shall be recoverable from him by distress, as under the Tithe Act, 1836, ss. 81, 85, and the enactments amending those sections. Sections 81 and 85 require the tithe owner, where the rentcharge is in arrear twenty-one days, to give the tenant in possession ten days' notice to pay the amount, and in default authorises him to distrain as for rent in arrear, and to dispose of the distress accordingly; but not more than two years' arrears may at any time be recoverable by distress. If the land is unoccupied, the notice may be affixed on some conspicuous part of it. And

s. 85 provides that the whole of the lands out of which the rentcharge issues shall be distrainable for the arrears.

Subject as aforesaid, the Tithe Act, 1891, provides a new method of recovering arrears of tithe rentcharge. By sub-s. 6 of s. 2, where the rentcharge is in arrear for not less than three months, a receiver of the rents and profits of the land out of which it issues may be appointed by order of a County Court judge. In cases where the tenant is liable to pay the amount to the landlord by virtue of a contract made before the Act, the landlord must serve notice of such liability on the tithe owner, and before an order is made for the appointment of a receiver the occupier must also be served and is entitled to be heard if he appears and desires to be heard. If the owner fails to serve this notice on the tithe owner, he shall not be entitled to recover from the occupier any sum which he has paid on account of tithe rentcharge as aforesaid, unless he has, after notice to the occupier of his application for the same, obtained from the County Court a certificate that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.

In the case of *Hughes v. Rimmer* (1893, 2 Q.B. 314), it was held that on an application by the landlord for a certificate under this

sub-section, it is not necessary to show that the occupier is liable to pay the tithe rent-charge by virtue of a contract made before the passing of the Act. All the County Court judge has to do in granting the certificate is to say whether there has been good and sufficient cause for the failure to give the notice,* and whether the occupier has been prejudiced.

By s. 4, where the rent reserved by the lease of the land is not sufficient to enable the receiver to recover the amount of the rentcharge, the County Court may order the recovery to be executed as if the occupier were the owner of the lands ; but in that case the occupier may, unless he would have been liable by virtue of a contract made before the Act to pay the rent-charge, deduct from any moneys at any time becoming due from him to his landlord any amount which shall have been recovered from him under this section in respect of tithe rentcharge or costs with interest at 4 per cent. per annum, and any such amount may also be recovered by the occupier from the landlord by action as money paid on the latter's account.

For further details with regard to the incidence of tithe rent-charge and the procedure prescribed for its recovery, see the Tithe Act, 1891, and the Tithe Rentcharge Recovery Rules, 1891, made thereunder ; and "Leach on the Tithe Acts," 6th ed., 1896.

Extraordinary Tithe Rentcharge.

In addition to the ordinary tithe rentcharge the Tithe Act of 1836 imposed an extraordinary rentcharge on hop grounds, orchards, fruit plantations and market gardens; but this was abolished by the Extraordinary Tithe Redemption Act, 1886, as to grounds newly cultivated after the passing of that Act (June 25, 1886).

Contracts made by tenants before the Act to pay the extraordinary tithe rentcharge are not affected, except that by s. 7 a new rentcharge at 4 per cent. on the capitalised value of the charge existing at such date is substituted, and in case of tenancies for terms of years this rentcharge continues payable whilst the tenancy lasts, and is recoverable by the landlord from the tenant as rent in arrear; but in case of yearly tenancies, or tenancies at will, this obligation ceased at the time when the tenancy would have been determinable if notice to determine the same had been given on June 25, 1886. Subject as aforesaid, this rentcharge is payable by the landlord notwithstanding any agreement to the contrary between landlord and tenant (Extraordinary Tithe Redemption Act, 1886, s. 7). This rentcharge must be distinguished from the ordinary tithe rentcharge, and the former is not affected by the Act of 1891. It is exempt from land tax.

Poor Rate.

Poor rate is a parochial tax levied upon every occupier of lands and houses within the parish. It is a personal charge on the occupier in respect of his possession of the land, etc. A lessee who is not in occupation, *e.g.*, where he has sub-let, is not liable to pay poor rate. But a person may be in occupation by his servant, though not himself resident.

Any kind of occupation is sufficient to render the occupier liable, *i.e.*, he may be only a tenant at will. The occupier of part of a house is liable for the rate where he has exclusive occupation of such part, though it is not structurally separated from the rest of the building (*Allchurch v. Hendon Union*, 1891, 2 Q.B. 436). Thus the occupier of a flat would be liable, but not a mere lodger, though he has substantially the sole use of his lodgings, the possession being retained by the person letting them.

The owner of a house let furnished is deemed to be the occupier for the purposes of the poor rate, and where a house is wholly let out in apartments not separately rated, the owner must be rated.

The owner is also liable to the poor rate where premises are let for a term not exceeding three months, the occupier on paying the rate being entitled to deduct the amount from

his rent (Poor Rate Assessment and Collection Act, 1869, s. 1).

Again, where the rateable value of the premises does not exceed £20 in the metropolis, £13 in Liverpool, or £10 in Birmingham, or £8 elsewhere, the same Act provides for the rating of the owners instead of the occupiers. There are two methods prescribed by the Act. Section 3 enables the owners to agree in writing with the overseers to become liable for the rate, the overseers allowing them a commission not exceeding 25 per cent. on the amount of the rates, while s. 4 empowers the vestry or, in rural parishes, the parish council or parish meeting (56 and 57 Vict., c. 73, s. 6 (1); s. 19 (4)), to order the owners to be rated instead of the occupiers, subject to the allowance of such abatements as are mentioned in such section. See as to the position of a compounding owner under s. 4, *In re Allen* (1894, 2 Q.B. 924).

The vestry can only order the owner to be rated instead of the occupier under s. 4, so long as the rateable value does not exceed the limits mentioned. Although the owner pay the rates under this Act, the occupier is nevertheless deemed to be rated for the purpose of the franchise, notwithstanding any irregularity in the agreement, order, etc., under which the owner has been rated (s. 7, and 42 and 43 Vict., c. 10, s. 2).

If the owner omit or neglect to pay the rates

before 5th June in any year, he loses the commission (32 and 33 Vict., c. 41, s. 5). But the occupier may pay the rate and deduct it from his rent (s. 8). Where the owner has become liable for the rates he may be distrained (s. 11), and, notwithstanding the owner's liability, the occupier may also be distrained. But he must have fourteen days' notice before distraint can be levied, and is not liable to be distrained to an amount exceeding the rent due from him, and he may then deduct it and costs from his rent (s. 12).

Tenants ceasing to occupy during the period for which the rate is made are only liable in proportion to the time of their occupation, and incoming tenants only for the time they occupy during that period (s. 16).

In the metropolis, an owner who is liable to pay the rate instead of the occupier, or does in fact pay it under a contract, is by virtue of the Valuation Metropolis Amendment Act, 1884, s. 2, deemed to be the ratepayer, having the right to appeal against the Assessment Committee.

By the Rating Act, 1874, all mines of every kind, and woods and plantations, and rights of sporting, when severed from the occupation of land, are made rateable under the Poor Rate Acts (see ss. 3, 6, 8). This Act applies to poor and other local rates, viz., county, borough, and highway rates, and other local

rates leviable upon property rateable to the relief of the poor (s. 15).

Where tenants are entitled to make deductions under this Act (see ss. 5, 6, 8), any such deduction operates as a payment *pro tanto* of his rent, or the amounts may be recovered as an ordinary debt from the person to whom the rent is payable (s. 9).

In the bankruptcy of a tenant, or winding-up of a tenant company, parochial and other local rates, and also taxes, rank with certain specified debts as preferential debts (Preferential Payments in Bankruptcy Act, 1888).

Inhabited House Duty.

This is a duty imposed in respect of every *inhabited* house, and is assessed on the rental value, varying from 2d. to 6d. in the £, according to the rent in the case of shopkeepers, public-houses, hotels, inns, coffee-houses, farmhouses, lodging houses, and from 3d. to 9d. in the £ according to the rent in the case of ordinary householders, town and country houses, clubs, professional men, etc.

There are a number of exemptions, the most important of which are in favour of houses occupied solely for any trade, business, or profession (see Dowell's House Tax Acts, pp. xx.-xxii.). The person chargeable with the duty is the legal occupier, as distinguished from a lodger or servant. As between landlord and

tenant, the duty is a tenant's tax, in the absence of any contract to the contrary.

Other Assessed Taxes.

In addition to the house tax, the tenant, unless there be any agreement to the contrary, has to pay other assessed taxes, such as duties on servants, carriages, armorial bearings, game certificates, etc.

County and Borough Rates.

(a) *County Rates.*—These are parochial rates, paid out of and collected with the poor rate, and must be borne by the tenant in the absence of any agreement to the contrary with the landlord. They are not included in the term, "parliamentary taxes." Unoccupied houses, if capable of being rated, should be included in the valuation; but incoming tenants only pay their proportion according to the time of their occupation.

(b) *Borough Rates.*—Borough rates are levied by the council of the municipal corporation, under the Municipal Corporations Act, 1882 (s. 144), in order to supplement any deficiency in the borough fund. The rate falls on the tenant in the absence of stipulation to the contrary.

For the purpose of an order of the vestry rating the owner instead of the occupier,

under s. 4 of the Poor Rate Assessment and Collection Act, 1869, poor rate will include borough rate (see Municipal Corporations Act, 1882, s. 147).

Highway Rates.

By the Highway Act, 1835, the highway rate was made by the Surveyor of Highways, but in all districts where the rural district council are the highway authority, the highway rate forms part of the general expenses of the district council (see Local Government Act, 1894, s. 29). In places within the district of urban sanitary authorities, the highway rate is included in the general district rate (as to this, see next section). In any case the rate is payable by the occupier, in the absence of contract to the contrary between him and the owner.

General District Rate.

This rate is levied under s. 211 of the Public Health Act, 1875, on the occupier of all kinds of property assessable to the poor rate. It is assessed on the full net annual value of the property; but in the case of land used as arable, meadow, or pasture ground only, or as woodland, market gardens, or nursery ground, or land covered with water, the occupier is to be assessed in the proportion of one-fourth part only of the net annual value (*ib.*) ; while

no person is to be charged with the rate in respect of premises while unoccupied. By the same section, in urban districts the owner is rateable at a reduced rate, instead of the occupier, at the option of the urban authority, in cases where the rateable value of the premises does not exceed £10, or the premises are let to weekly or monthly tenants, or are let in separate apartments, or the rents are payable or collected at any shorter period than quarterly.

In the case of outgoing and incoming, owners and occupiers, the same section provides for their being respectively liable only for such part of the rates as is proportionate to the time during which they continue owners or occupiers respectively (sub-s. 3). Covenants or agreements in leases to pay rates, etc., are not affected by the Act (s. 226), nor in the metropolis by the Public Health (London) Act, 1891 (see s. 121 of latter Act).

As to the construction of covenants to pay rates, etc., see *ante*, pp. 152-156. In the case of *Brett v. Rogers*, 1897 (1 Q.B. 525), it was held that the word "duties" in a covenant of this kind included the expense of laying a new drain, pursuant to the requirements of a sanitary authority, under the Public Health (London) Act, 1891, and see cases cited, Woodfall, L. and T., 16th ed., p. 614.

In addition to General District Rates under

the Public Health Act, 1875, the occupier is also liable to Private Improvement Rates under the same Act, but he is entitled to deduct from his rent three-fourths of these, or such proportion of three-fourths of the rate paid by him as his rent bears to the rack rent, unless he has contracted in the lease to bear them.

Lighting and Watching Rates.

Another occupier's rate is that levied under the Lighting and Watching Act, 1833, in rural parishes. Its incidence may, however, be made a matter of stipulation as between owner and occupier.

Water Rates.

This is an occupier's rate except where the landlord has agreed to bear it, or where, under statutory regulation, the owner is liable instead of the occupier. Thus, the landlords of small tenements, *i.e.*, of an annual value not exceeding £10, are liable instead of the occupier (Waterworks Clauses Act, 1847, s. 72).

The power given to the water companies by s. 74 of the same Act, to cut off the water supply in case of non-payment of the rate, is now limited by s. 4 of the Water Companies (Regulation of Powers) Act, 1887, which provides that where the owner is liable for the rate, either by law or agreement, the company shall not cut off the supply, but the amount of

the rate, with interest at £5 per cent. per annum, is instead made a charge on the premises in priority to all other charges affecting them. At the same time, a right is given to the company to recover the rate and costs from owner or occupier in the ordinary way, subject, however, to the following, viz.:— as regards the occupier, no proceedings are to be taken against him until he has had notice to pay the amount out of the rent due, or which shall become due from him, and he shall have omitted to pay the rate; and no amount shall be recovered from him beyond the amount of rent due or accrued due since the notice; and any amount paid or recovered from him he shall be entitled to deduct from his rent.

If the supply is cut off in contravention of this Act, the company incur a fine of £5 per diem, recoverable summarily, and to be paid to the person aggrieved (s. 5).

Water rent paid by an occupier under the Waterworks Clauses Act, 1847, s. 44, may, by virtue of s. 57 of the Public Health Act, 1875, be deducted from his rent.

The term rates, in a covenant to pay rates, taxes, etc., does not include water rate, at least, where the covenant speaks of rates “imposed” on the premises, water rate being a voluntary rate so far as the occupier is concerned, inasmuch as he is not bound to take a

supply (see *Badcock v. Hunt* (1889), 58 L.J. Q.B. 134); but there may be words in the covenant which inferentially include water rate in the term "rates" (see *e.g.*, *Direct Spanish Telegraph Company v. Shepherd*, 13 Q.B.D., where the lessor covenanted to pay all rates and taxes except gas rate).

Again, water rates being assessed in the metropolis at a fixed sum, according to the rateable value of the premises, a covenant by the lessor to pay all rates, etc., water rate and other outgoings now or hereafter to be imposed or assessed on the premises, will not include a rate specially agreed upon, *e.g.*, for trade purposes, between the lessees, the consumers, and the company (*Floyd v. Lyons*, (1897), 1 Ch. 633).

Gas Rate.

This is always a tenant's rate, unless there be an express contract by the landlord to pay it. An incoming tenant is not liable for arrears of gas rate due from an outgoing tenant, unless he has contracted with the latter to pay it.

General Rate in the Metropolis under the London Government Act, 1899.—This Act provides for all the expenses of the borough councils created under it being paid out of one general rate to take the place of the poor rate and separate sewers and lighting rates. This general rate will be assessed, levied and collected as if it

were the poor rate, and all enactments relating to the poor rate shall, subject to the provisions of the Act as to audit, apply to this general rate (see ss. 10 to 14).

By s. 12, as between landlord and tenant, a tenant who would, but for this Act, have been entitled to deduct against or be repaid by his landlord any sum paid on account of sewers rate, shall be entitled to deduct against or be repaid by his landlord such portion of the general rate as represents the sewers rate.

Partial exemption from rates under Agricultural Rates Act, 1896.—By the Agricultural Rates Act, 1896, the occupier of “agricultural land” is exempted for a period of five years, from 31st March, 1897, from one-half of the rates referred to in the Act. For the meaning of “agricultural land” and “rates” see Wright’s “Agricultural Rates Act, 1896.” *

(c) *Covenant to Repair.*

The express covenant to repair is, perhaps, next to the covenant for rent, the most important of the lessee’s covenants.

We have already seen (*ante*, pp. 127-129) that even without any express covenant or agreement in that behalf, a tenant is, in some cases, by law bound to do a certain amount of repairs, and not to permit waste. The extent of this

* Published at the Office of the ESTATES GAZETTE, 6, St Bride-street, E.C.

obligation is, however, not very clearly defined, and is, moreover, dependent upon the duration of his holding. In nearly all leases for terms of years there is an express covenant or agreement by the lessee to do some repairs. If the term does not exceed three years, the tenant's undertaking is, as a rule, virtually limited to keeping the premises in tenantable repair or condition, "fair wear and tear excepted"; while in leases for longer periods, the covenants are of a more extensive character, *e.g.*, to do certain specified repairs, such as painting, papering, etc., at stated periods. The covenant may, of course, be so worded as to extend or modify, as the case may be, this obligation.

Sometimes there is also an express covenant not to do or permit waste, or particular acts of waste, to the premises. A covenant of this kind is mostly found in agricultural leases.

Waste.

It may be convenient in this place to discuss the meaning of waste with reference to the obligation of the lessee, which is, as we have seen in some cases, independent of express agreement. A tenant may be liable to an action for waste, either at common law, or on his covenant not to do or permit waste, and at the same time to an action for breach of his covenant to repair and leave in repair.

Before, therefore, proceeding to discuss in

detail repairing covenants, we will endeavour to explain the obligation of the tenant with regard to *waste*.

Definition of Waste.

The definition of waste usually found in the text books is that given by Blackstone (2 Comm. 281), viz., a spoil or destruction in houses, gardens, trees, or other corporeal hereditaments to the injury of the reversion or inheritance.

There are various species of waste, but the two main divisions are *voluntary* or *commissive* waste, and *permissive* waste. Besides these there are other kinds, *e.g.*, “*meliorating*” waste, and “*equitable*” waste.

Voluntary or *commissive* waste consists in such an act of destruction as pulling down a house or cutting *timber* (see as to the meaning of timber, *post*, Chapter VII.) or fruit trees, or removing fixtures (as to what are fixtures, see also *post*, Chapter XIII.), glass, etc., reducing the number of doves in a dove-house or animals in a warren, so that there will not be enough for the reversioner when he comes to the inheritance.

So, to convert one kind of land into another, *e.g.*, arable into pasture, is waste, because it not only changes the course of husbandry, but may also create a difficulty in the evidence of title to the estate; *e.g.*, a field described and

conveyed as arable, may be found to be pasture and *e converso*; by the same rule, to convert one kind of building into another is waste, even though it be improved in value. This, however, is called *meliorating* waste, as to which, see *post*, p. 182.

Again, to open lands for the purpose of getting minerals is waste, for that is a detriment to the inheritance; but if the pits or mines were open before, it is no waste for the tenant to continue digging them for his own use, for it is now become the mere annual profit of the land. These are the three general heads of waste, viz., in houses, in timber, and in land; but anything else which tends to the destruction or depreciation of the value of the inheritance is considered waste.

But a tenant may dig gravel or clay for house repairs, and cut necessary timber for the same purpose, and also wood for the repair of walls, fences, etc., and *underwood* he may cut at all seasonable times. Where a house is destroyed by act of God, or other act without any default on the part of the tenant, it is no waste, and the tenant may rebuild with such materials as remain, and with other *timber* which he may take growing on the ground.

But although a tenant may take necessary timber for repairs, he is not entitled to sell the timber and expend the money on repairs, the

selling is waste, though the user of the timber for repairs would not have been.

It must be understood that the tenant is not entitled to cut ornamental timber. This would be equitable waste.

Meliorating waste will not generally speaking be restrained by injunction, and the damages may be merely nominal (see *Doherty v. Allmann*, 3 App. Cas. 709) ; in which case it seems the tenant, in an action for waste, by the landlord, would be entitled to judgment.

Equitable waste consists in such acts of wilful damage as were formerly cognisable only in a Court of Equity ; *e.g.*, cutting down ornamental timber by a tenant, even though he holds his estate “without impeachment of waste.” Questions with regard to equitable waste do not, in practice, concern tenants having any less interest than that of a tenant for life—tenants for years, etc., never being made punishable in respect of waste.

Permissive waste.—Instances of permissive waste would be allowing a house to be uncovered so as to render the rafters or timbers rotten ; but the timber, etc., must become rotten. So it is waste of this kind to allow walls to decay for want of plastering ; and if the tenant allow a house to decay, and then cuts timber with which to repair it, it seems that is double waste. It is waste to allow a sea wall to decay, so that a

meadow becomes flooded ; or a river wall to be out of repair, whereby a meadow or marsh becomes rushy and unprofitable.

Waste is a peculiar kind of destruction, and in considering whether it has occurred no account is to be taken of any repairing covenant, as an action for waste can only be for that which would be waste if there were no stipulations respecting it. The obligation of a tenant in respect of waste differs from that which is imposed upon him by a repairing covenant. He may be liable to both actions, the landlord's remedies being cumulative.

But no act is waste which is permissible by local usage or the express terms of the lease.

The Landlord's Remedies for Waste.

Where there is a covenant not to commit waste the landlord has an action for breach. If there is no covenant then the question to be determined is whether an action for waste, as it is technically called, will lie against the tenant.

By the conjoint operation of two old statutes, as interpreted by the Courts, viz., the Statute of Marlbridge (52 Hen. III., c. 23, s. 2), and the Statute of Gloucester (5 Ed. I., c. 5), an action of waste will lie against tenants for terms of years for both voluntary and permissive waste. But yearly tenants are not within the terms of the statutes, although, as

we have seen, they are impliedly bound to use the demised premises in a proper tenant-like manner, and to keep them wind and water tight, and not to commit waste, so that in effect they are liable for voluntary waste, though not under the statutes. So a tenant at will (as to which see *post*, Chap. III.) is only liable for voluntary waste, the commission of which determines his tenancy, and makes him liable to an action of trespass.

In an action for waste brought during the term, whether on a covenant not to do or suffer waste, or otherwise, the measure of damages is the diminution in the value of the reversion, less a discount for immediate payment; but vindictive damages may be given in exceptional cases (see *Whitham v. Kershaw*, 16 Q.B.D. 613).

Besides an action for waste the landlord may obtain an injunction against voluntary waste, *e.g.*, pulling down a house or ploughing up pasture, cutting trees, etc., but not against permissive waste; nor, generally speaking, meliorating waste (see *ante*, p. 181).

An action for waste may be brought against the executor of a tenant for any waste committed within six months before the testator's death.

As to counterclaims for waste in proceedings under the Agricultural Holdings Act, see *post*, Chap. XIII.

The Covenant to Repair.

As already stated, nearly all leases contain an express covenant by the lessee to repair. This covenant differs according to the nature and extent of the tenancy, *i.e.*, it is wider in case of leases for terms exceeding three years than in leases for a less period, and also it varies according to the nature of the holding, *e.g.*, whether it be an agricultural or mining lease, or a lease of a house.

Take the common case of a repairing covenant in a lease of a house. If the term does not exceed three years the lessee usually covenants or agrees to keep the demised premises with all fixtures, additions and appurtenances in good and substantial, or in tenantable repair and condition, fair wear and tear and damage by fire excepted, and to leave the same in good repair at the end of the term; while, in a *yearly letting*, the tenant's agreement as to repair is virtually confined to keeping the interior in good repair, the landlord undertaking the roof and outside walls.

But if the lease exceed three years a more stringent covenant is exacted from the tenant, who generally agrees not only to repair in general terms, but also to execute particular repairs, *e.g.*, to paint outside every third year and to paint and paper inside every seventh year, and to wash, stop and whiten, or colour,

all parts of the premises which are plastered at the beginning of the lease ; and there is also usually a further covenant by the tenant to permit the landlord to enter at reasonable times and view the state of the repairs and to give the tenant notice to execute such repairs as on such view may be found to be necessary, the tenant agreeing to execute them within a certain time after receipt of such notice.

These two covenants will generally be held to be distinct, so that the tenant may be liable on the general covenant as well as, after notice of want of repair, under the special covenant. The landlord may sue at once for breach of the general covenant without waiting for the expiration of the time specified in the notice. Notice to repair under the special covenant would only operate as a waiver of any *forfeiture* which may have happened under the general covenant ; and a notice to repair generally would not have even this effect (see further as to this *post*, p. 204).

A covenant to repair at all times when necessary and “ at furthest within three months after notice,” is a single covenant, the former part of which is qualified by the latter.

In the absence of stipulation the landlord may not lawfully enter and repair without the tenant's leave, or he will be liable to an action for trespass.

It is, perhaps, hardly necessary to say that the forms of repairing covenants and the variations from those forms have given rise to numerous decisions as to the meaning of the terms used. It is proposed here to give the substance of such cases as relate to common points of modern interest.

A general covenant to repair a house means to keep in substantial repair, having regard to its age, class, and general condition at the time of the demise (*Proudfoot v. Hart*, 25 Q.B.D. 42). For instance, the tenant of an *old* house is not bound under such a covenant to make good dilapidations naturally resulting from the operation of time and the elements (*Lister v. Lane*, 1893, 2 Q.B. 212—a case of an old house of faulty construction and resting on insufficient foundations). Subject to these considerations, substantial repair—not the making good of every trivial defect — is all that is required under such a covenant — *e.g.*, leaving nails in walls is not a breach of this covenant (per Cave, J., in *Perry v. Chotzner*, 9 T.L.R. 488).

So if the covenant is to *keep* in repair or leave in repair at the end of the term, although the tenant must, if necessary, that is if the premises are out of repair at the time when he takes them, put the premises into repair, yet the same considerations are to be borne in mind (*Proudfoot v. Hart*, *sup.*).

This case contains a very useful resume of the decisions as to the meaning of the word tenantable repair and the definition given by the Court of Appeal is this: A covenant to keep in tenantable repair means to keep in such repair as having regard to the age, character and locality of the house would make it reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take it.

There is no practical difference between "tenantable" and "habitable" repair—both mean such an amount of repair as will make the premises habitable, not only with safety but with reasonable comfort, and the addition of the word "good" does not seem to alter their effect.

Under a covenant to keep in "tenantable" or "habitable" repair, the tenant is not liable to do merely decorative repairs, *e.g.*, papering, painting or whitewashing, unless it be absolutely necessary to preserve the premises from decay, or to fit them for a tenant of the kind described, and even then he is not bound to use materials of the same kind or value as were in use at the beginning of the tenancy. And with regard to structural repairs, he is not bound to replace a floor if he can repair it sufficiently to satisfy a reasonably-minded tenant.

If the covenant is to "*put into habitable repair*,"

that necessarily implies that they are not so at the time of the demise, and the tenant must therefore put them into a habitable condition as above defined.

We have seen (*vide Proudfoot v. Hart, sup.*) that a general covenant to repair may involve some degree of painting, and unless there be a special covenant as to painting, it seems there will be no obligation on the tenant to do more than paint for such purposes as are indicated in the case above cited. Thus the mere introduction of the word "paint" into a general covenant "as often as necessary to repair, uphold, sustain, paint, glaze, cleanse and scour and keep and leave the premises in such repair, reasonable wear and tear excepted," does not oblige the tenant to do more than clean the old paint, at any rate, if he has painted within a reasonable time before leaving (see *Scales v. Lawrence*, 2 F. and F. 289). The same case shows that evidence of local usage to paint inside and outside at certain stated times is admissible.

A covenant or agreement by the lessor to do *necessary* repairs requires him to put the premises into repair at the beginning of the tenancy, and it seems if the covenant were by the lessee the latter would be under a similar obligation.

It is a breach of a general covenant to repair to break a doorway through a wall, and to allow it to so remain; but where the covenant

clearly contemplates improvements or additions, *e.g.*, if it be to repair and keep in repair a dwelling house together with *all such buildings, improvements and additions as should be executed* by the lessee—such alterations as enlargement of windows, opening external walls and taking down partitions, are no breach of the covenant.

A covenant to repair the external parts of the demised premises includes a party wall.

Sometimes the lessor covenants to repair “roof, walls and main timbers.” It is not clear whether “main timbers” would include joists which support the floors. In *Manchester Bonded Warehouse Company v. Carr*, 5 C.P.D. 213, it was held that under such a covenant the lessor was bound to replace iron beams, there being no *main timbers* in the structure.

A covenant in a farm lease to “*substantially*” or “*well and substantially*”—which practically means the same thing—repair, and “so well and substantially repaired” to yield up at the end of the term, obliges the tenant to leave the premises in as good a state of repair as when he took possession, at which time it must be inferred they were in a tenantable condition; and a covenant by the tenant of a farm and mill to keep the “messuages and buildings” in repair involves the keeping in repair of the mill wheel.

In an old case it was held that to leave broken glass in windows at the end of the term

was a breach of a covenant to leave the premises at the end of the term "sufficiently maintained, repaired, paled and fenced."

N.B.—In the case of an implied contract to repair on the part of a yearly tenant, he is not, it seems, bound to replace broken glass in windows, but may exclude wet by boards (see *Woodfall, L. and T.*, 16th ed., p. 638).

A covenant to "repair" must be distinguished from one to "rebuild." The landlord is not entitled to have something different at the end of the term from that which he demised. Rebuilding can only be required where there is a clear undertaking to that effect. But in the case of destruction of the premises, whether by accident or otherwise, a general covenant to repair would involve rebuilding, unless it be so expressed as to exempt the covenanting party under such circumstances (see further as to this *post*, p. 193).

Again, a covenant to "make, uphold, support, cleanse and repair, and keep in repair" all drains does not bind the lessee to make new drains during the term (see *Lyon v. Greenhow*, 8 T.L.R. 457); nor does a covenant to keep drains in good tenantable repair oblige the tenant to effect structural alterations. Though he is bound to repair the existing drains he is not bound to inaugurate a new system of drainage (see *Hugall v. McLean*, C. and E. 391).

A lessee is not liable for any dilapidations

which can be shown to have occurred before the execution of the lease, even though they took place since the date from which the habendum states the beginning of the term, *e.g.*, if by a lease executed on 25th March, premises are demised for a term of years to hold from the 25th December last past. No dilapidations occurring between these dates can be charged against the lessee under his repairing covenant.

A covenant to repair *forthwith* means "with all reasonable celerity," but not "immediately."

Under a covenant to repair and keep in repair during the term, the lessee must have them in repair at all times during the term. An action for breach may be brought at any time, the damages being the depreciation in the market value of the reversion.

The breach of a covenant to "keep" in repair, as distinguished from a covenant to "put" or "leave" in repair, is a continuing breach, and the lessee is liable to be sued notwithstanding judgment has already been recovered against him, though the judgment might be pleaded in mitigation of the damages.

A general covenant to repair, *prima facie*, extends to everything that is the subject of the demise, and also to new buildings erected during the term, unless the covenant be to repair "the *demised buildings*," when new buildings will not be affected unless they are attached to

and made part of the old. Also it includes all fixtures (see as to these *post*, Chap. XIII.).

A covenant to *yield up* in repair fixtures may prevent the tenant from removing even such fixtures as are clearly "tenant's" fixtures (see as to these *post*, Chap. XIII.).

Where a sub-lease contains a repairing covenant identical in terms with that in the superior lease, it has not the same effect, nor is the measure of damages for breach of it the same (see as to this *post*, p. 199).

Obligation to Repair in case of Fire.

If the repairing covenant be not qualified in any way the lessee will be bound to repair and rebuild, even if the premises are destroyed by fire, whether accidental or not, or by tempest or earthquake. And even if the premises have been insured and the landlord has received the insurance money, that will not relieve the tenant from his obligation under the covenant to repair; nor will the amount of the insurance-money under the tenant's covenant to insure be the limit of his liability under his repairing covenant.

Usually, however, the covenant to repair contains an exception in case of "damage by fire or other inevitable accident," but even where this is so, the exception creates no obligation on the part of the lessor to rebuild or repair in such a case, nothing but an express

covenant by him would render him liable to do so (see as to the effect of destruction by fire, etc., on "The covenant to pay rent," *ante*, p. 150).

An exception of this kind in a repairing covenant does not extend to the consequences of the tenant's own acts, as *e.g.*, where a tenant by overloading a floor causes the whole building to collapse, this is not within the exception, but the tenant will be bound to re-instate the premises, unless the collapse was not fairly to be attributed to the overloading—that is, if he has only used the premises reasonably, and in a way in which it was natural to use them (see *Manchester Bonded Warehouse Company v. Carr*, 5 C.P.D. 507).

The exemption from liability for accidental fire contained in the Old Building Act, 1774 (14 Geo. III., c. 78, s. 86), does not affect an express covenant to repair in a lease (see further as to this Act, *post*, pp. 206, 209-211).

Other Points.—Although eviction may be a good defence to an action on the covenant for rent (see *ante*, p. 148), it does not free the tenant from the obligation to repair.

A covenant to complete unfinished houses within a certain period, and to repair them during the term, obliges the covenantor to repair the houses even though he do not complete them within the time stipulated.

Where the covenant is to repair the demised

premises, the same being first put into repair by the lessor, the latter is bound to put *the whole* in repair before he can call on the lessee to repair any part.

Express Covenant by Lessor to Repair.

Where the lessor covenants to repair, it is an implied condition that he shall have actual notice of want of repair before he shall be held liable for breach of his covenant (see *Hugall v. McLean*, 53 L.T. 568).

Moreover the lessor's omission to repair pursuant to his covenant does not justify the lessee in quitting, though it may entitle him to do the repairs himself, and either deduct the expense from his rent or counterclaim for it, if sued for such rent.

A covenant by the lessor to repair impliedly authorises him to enter upon the premises and to occupy them for such reasonable time as is necessary to enable him to execute the repairs, notwithstanding a covenant on his part for quiet enjoyment.

But unless there be an express covenant by the lessor to repair, he cannot lawfully (*i.e.*, he would be guilty of a trespass) go upon the demised premises, in order to execute repairs which the tenant has covenanted, but neglected, to do ; not even where the lease is a sub-lease and such want of repair by the sub-lessee may entail a forfeiture of the superior lease. There-

fore, where, as is the rule, the lessee expressly covenants to repair, it is usual to insert also a covenant giving the lessor a power at certain times, or after notice, to enter the premises to view the state of repairs, and, upon the lessee's default, to do the necessary repairs at the lessee's expense.

Although a landlord would be guilty of trespass in improperly entering the demised premises in order to do repairs which the tenant ought to have done, he could nevertheless recover the amount of such repairs.

Remedies for Breach of Covenant to Repair.

- 1.—Action for damages.
- 2.—Re-entry to repair.
- 3.—Forfeiture.

1.—*Action for damages.*

Where the lessee commits a breach of a covenant to repair, the lessor can at once sue him for damages for the breach. (N.B.—If the lease is not under seal it is an analogous action for breach of contract.)

On the covenant to *leave* in repair no right of action accrues before the end of the term.

We have before explained (see *ante*, p. 192) that a breach of a covenant to repair is a continuing breach, and the fact that judgment has already been recovered in an action on the covenant does not preclude a second action if the tenant allows the breach to go unhealed,

and the lessor is not bound to expend the damages recovered in the first action in repairing the premises.

In the case of *Henderson v. Thorn* (1893, 2 Q.B. 164), the difference between a covenant to *repair* and one to *leave in repair* is well illustrated. There an action was brought during the term against the lessee for breach of covenant to repair. A sum of money was paid into Court and the action discontinued. At the end of the term another action was brought on the covenant to repair and leave in repair. The particulars in the second action included the items of non-repair in respect of which the first action had been brought, and also additional items arising since the date of that action. The damages were assessed by an official referee by determining the sum required at the end of the term to put the premises into repair, less the amount paid into Court in the first action, together with a sum for depreciation. It was held that the damages in the second action were assessed on the right principle, and that the money paid in the first action must be considered as having been paid and accepted as damages for the injury to the reversion, and not as being the sum then required to put the premises into repair.

Measure of Damages.

With regard to the measure of damages which may be recovered in an action for breach

of a covenant to repair, these differ according as the action is brought during the term, or at the end of it.

(a) *If the action is brought during the term* the measure of damages is the amount by which the market value of the reversion is depreciated. At the beginning of a long lease this may be trifling, while the nearer it is to the end the larger the damages are likely to be. (N.B.—The measure of damages for breach of a covenant to build appears to be the same, and not the cost of the building.)

(b) *If the action is brought at the end of the term*, that is, on the covenant to *leave in repair*, the damages are the cost of putting the premises into the state in which the lessee ought to have left them pursuant to his covenant; and the landlord may also be awarded some compensation for the loss of the use of the premises while under repair. Substantial damages may be recovered by the landlord under this covenant, even though the premises are to be immediately pulled down and rebuilt, or though they have been relet and repaired by the new tenant. There is a right of action for damages vested in the landlord immediately upon the termination of the lease, and that right is not affected by anything which subsequently takes place between the landlord and some third person, even though the effect of it is to put the landlord in the

same position as if the tenant had carried out his covenant (see *Joyner v. Weeks*, 1891, 2 Q.B. 31).

Moreover the right to damages for breach of this covenant is not affected by the fact that the lessor's own interest has become forfeited through the lessee's breach of covenant, *e.g.*, in case of an underlease; and so strict is the rule that, although the premises and their surroundings have become depreciated in value since the commencement of the term, so that some of the repairs which would otherwise have been necessary are no longer so, yet the measure of damages is the same as if no such depreciation had taken place, *viz.*, the amount required to put them in such repair as was originally contemplated by the covenant (see *Morgan v. Hardy*, 17 Q.B.D. 770).

Damages in Case of a Sub-lease.

Where the lease is a sub-lease difficult questions arise as to the damages recoverable for breach of the sub-lessee's repairing covenant.

Although the repairing covenants in the original lease and sub-lease may be in identical terms, yet their effect is different, because they are not entered into at the same time nor for the same periods. Therefore a lessee who has sub-let will not necessarily be entitled to recover from the sub-lessee the whole of the

damage for which he is himself liable to *his* lessor.

So distinct are the two covenants that the lessee may have substantial damages for the breach of the sub-lessee's repairing covenant, although he has meanwhile himself, by his own act, involved a forfeiture, both of his own lease and the sub-lease. But he cannot recover the cost of repairs which he has done himself to save a forfeiture of his own lease, if there has been no default by the sub-lessee under *his* repairing covenant. Where, through breach of covenant by the sub-lessee to repair, the lessee has been sued for breach of *his own* repairing covenant, it is not clear whether he can recover the costs of the proceedings from the sub-lessee as part of the damages contemplated by the parties as the probable consequences of the breach of the sub-lessee's covenant (see the next cited case).

In *Ebbetts v. Conquest*, 1895, 2 Ch. 377 (S.C. sub.nom. *Conquest v. Ebbetts* (1896, A.C. 490)), an important case to be noted in this connection, the question was what was the measure of damages which a lessee who had sub-let was entitled to recover from his sub-lessee under the following circumstances: The sub-lease contained a covenant by the sub-lessee to repair, and the sub-lessee had notice that the sub-lessor was himself only a lessee and liable on his own covenant to leave in repair at the end of his

lease. An action on the covenant to repair was brought by the sub-lessor against the sub-lessee during the term of the underlease. The measure of damages in an action on the covenant to repair brought during the term is, as we have already seen (*ante*, p. 198), the diminution in the value of the reversion. But this applies to the case of a freehold reversion. Where the reversion is leasehold only, there are other circumstances to be considered, such as the liability of the lessee under *his* lease to leave in repair. Apart from this there may, in the particular case, be no diminution in the value of the leasehold reversion. For instance, if the reversion be a nominal one, the difference in its value as a reversion, whether the repairing covenant be performed or not, would be trifling; but if the lessee's liability to leave in repair be considered, the difference between the value of that reversion, with the sub-lessee's covenant performed, and its value if such covenant be unperformed, may be considerable. This element of liability is, therefore, properly to be taken into account in estimating the damages to which the sub-lessor will be entitled on breach of the sub-lessee's repairing covenant, and especially is this so if the sub-lessee knows that his sub-lease is a sub-lease. The damages, which would otherwise be exceptional, become part of those which must be taken to have been in the con-

templation of the parties to the sub-lease as those which would naturally flow from the breach of the repairing covenant in the sub-lease. This is the principle that was applied in *Ebbetts v. Conquest*, a decision which should be very carefully noted and studied, especially the judgments of the Court of Appeal (1895, 2 Ch. 377).

A lessee who sub-lets should require the sub-lessee to covenant to indemnify him against the covenants in the superior lease, so that should the lessee be sued by the superior lessor he can bring in the sub-lessee as a third party and obtain in the same action a judgment against him on his covenant of indemnity.

If, instead of sub-letting, the lessee assigns, his assignee should also give a covenant of indemnity, though the law would imply one; but it is always better to have an express covenant.

If the sub-lessee gives no such indemnity, and by his neglect causes the sub-lessor's reversion to be forfeited, still it seems the sub-lessor cannot recover from the sub-lessee for the loss of his interest.

Remedy of sub-lessee against sub-lessor.—If a lessee who has sub-let commits a breach of his own repairing covenant, whereby the sub-lease becomes liable to be forfeited, the sub-lessee's only remedy against the sub-lessor appears to be such as may be afforded by an

action for breach of covenant for quiet enjoyment. In such an action the measure of damages would, if the sub-lessee has been evicted, be the full value of what he has lost thereby, plus any expenses necessarily or reasonably incurred by him; while, if there has been no eviction, then the measure of damage would be the loss which the sub-lessee has actually sustained.

2.—*Re-entry to Repair.*

As already stated (see *ante*, p. 195), unless the lease contains a stipulation that the landlord may enter for the purpose of doing repairs, he cannot do so without committing a trespass, which he may be restrained by injunction from committing. Still, though a trespasser, he may recover from the tenant the expenses of executing repairs which the tenant ought to have done.

3.—*Forfeiture.*

Besides the above-mentioned remedies for breach of the tenant's repairing covenant, the landlord may treat the breach as a ground of forfeiture, entitling him to re-enter and put an end to the lease, where the lease contains a proviso for re-entry on breach of any of the covenants. But, if there is no such proviso, the landlord's only remedy is by action for damages.

Even where the landlord is entitled to re-enter

under such a proviso, he cannot now enforce the forfeiture against the tenant without giving him first the opportunity of remedying the breach (Conveyancing Act, 1881, s. 14). The subject of forfeiture and relief against forfeiture will be treated in detail in another chapter (see *post*, Chap. X.).

The effect of a proviso for re-entry on breach of covenant, where there is a *general* covenant to repair and a *particular one to repair within a certain time after notice*, has been considered in several cases. The two covenants are quite distinct; and failure to repair gives the landlord the right to re-enter at once under the general covenant without giving any previous notice to repair under the particular one. And, even if the landlord gave the tenant notice requiring him to repair *forthwith*, that does not prevent him bringing ejectment at once, notwithstanding a particular covenant to repair within three months after notice, and that such three months have not expired.

But if a *three months' notice* to repair be given it operates as a waiver of any breach of the general covenant during the three months, and prevents any re-entry or ejectment before the expiration of that period.

Again, take the case of a general covenant to repair, followed by the ordinary special covenant to repair within two months after notice, with a proviso that, on failure by the tenant to

do the specified repairs, the landlord may re-enter and do them at the tenant's expense, and also the common proviso for re-entry on breach of any covenant. If the landlord give notice to the tenant to repair within the time stated, in default whereof he will do the repairs himself and charge the tenant with the expense pursuant to the lease, this operates as a waiver of any breach of the general covenant to repair committed before the expiration of the notice.

The breach of a covenant to repair and keep in repair, as distinguished from a covenant to put or leave in repair, is, as already explained (see *ante*, p. 192), obviously a continuing one. It follows, therefore, that the acceptance of rent becoming due pending a notice to repair is no waiver of the fresh cause of forfeiture which is caused by non-compliance with such notice; while acceptance of rent after an ejectment action has been commenced is no waiver of the forfeiture in respect of which the proceedings were taken.*

(d) *Covenant to Insure.*

A covenant to insure was the outcome of the common law rule that a tenant was not liable to make good loss or damage to the demised premises by accidental fire—a rule which still holds good where there is no express agree-

* As to the respective liabilities of lessor and lessee to third persons for injuries caused through the premises being out of repair, see *post*, Chap. VII.

ment to repair. The old Building Act, 1774—a declaratory enactment on this point and still in force—while exonerating persons from any claims in respect of accidental fires in houses, expressly excepts the case where there is a contract (*e.g.*, a covenant or agreement to repair) between landlord and tenant.

The usual form of a covenant by the lessee to insure is that he will insure the demised premises, either to their full value or to some stated amount, in an office to be approved by the lessor, and either in the joint names of the lessor and lessee, or in the name of either, and to keep the premises insured during the term, and further to produce the policy and show the receipt for the premium for the current year to the lessor or his agent on request, and to expend all insurance moneys received in rebuilding or repairing the demised premises, as may be necessary; and sometimes the covenant provides that, if the tenant omit to insure, the landlord may do it and recover the amount as rent (Woodfall, L. and T., 16th ed., p. 691).

It is to be noted that a policy of fire insurance being merely one of indemnity, the insurer who has paid on a policy a loss which has been made good from another source is entitled to recover the amount so paid from the insured, *e.g.*, where an insurance company paid the policy moneys to a landlord in respect of a loss

which the tenant made good under his repairing covenant, it was held they could recover it from the landlord (see *Darrell v. Tibbitts*, 5 Q.B.D. 560).

In that case the demised premises had been damaged by an explosion of gas caused by injury through a steam roller belonging to the Corporation of Brighton. The premises were insured by the landlord under a policy which covered explosion by gas. On that policy the insurance company paid the landlord's claim. Subsequently the Corporation compensated the lessees, who expended the money in re-instating the premises under their repairing covenant, which contained an exception in case of damage by fire, but not of explosion by gas. The relative positions of the landlord, the tenant, and the insurance company are clearly explained in the following extract from the judgment of Brett, L. J.: "If," he said, "the tenants had not repaired the damage, and had declined to do so, the insurance company would have been bound to pay the landlord who had insured with them, but would have had a right to bring in his name an action against the tenants, and recover from the tenants what they had paid to the landlord, in other words, a policy of fire insurance is a contract of indemnity similar to that which is contained in a policy of marine insurance. . . . Further, . . . if the landlord had sued the tenants before he received payment from

the insurance company, he must have recovered from them, for it would have been no answer by the tenants that the landlord was insured." Again, "if the landlord had recovered damages from the tenants equivalent to the injury done to him by the refusal of the tenants to repair, he could not afterwards sue the insurance company." The question then was whether the insurance company, who had paid the money to the landlord at a time when they were obliged to pay by virtue of their contract, could recover it back because the tenants have done that which they could not avoid doing. "If," said his lordship, "the company cannot recover the money back it follows that the landlord will have the whole extent of his loss as to the building made good by the tenants, and will also have the whole amount of that loss paid by the insurance company. If that is so, the whole doctrine of indemnity would be done away with, the landlord would be not merely indemnified he would be paid twice over . . . It seems to me that according to all rules of law we have a right to imply a promise on the part of the landlord to the insurance company at the time of payment by them that, if the loss should be afterwards made good by the tenants, he would repay the money which he received from the insurance company."

We have quoted this judgment at some

length because it explains very clearly the effect of a policy of fire insurance, and its bearing on the relative rights and duties of the landlord and tenant. It is true that in *Darrell v. Tibbitts* the covenant to insure was by the *landlord*, as is not infrequently the case ; but the principle laid down would have been equally applicable had the covenant to insure been by a lessee who had assigned or sub-let his term, and the premises had been made good by the assignee or sub-tenant ; or, even if, without any assignment or sub-lease, the damage had been otherwise made good without any expense to the lessee.

Although it has been held that a tenant who has covenanted to rebuild cannot compel his landlord, who has received the policy moneys from an insurance company, to expend the same in rebuilding the premises, yet as a " person interested " he can, it seems, require the company to cause the money to be laid out in that way. This would be under the provisions of the Building Act, 1774, still in force, which requires the insurance company, upon the request of any person interested in, or entitled to any house or building burnt or damaged by fire, to cause the insurance money to be expended so far as it will go in rebuilding or repairing the premises ; and to do so without such request, upon suspicion that the owner, or occupier, or the person insured, has

been guilty of fraud, or has wilfully set fire to the premises. These provisions will have effect unless the party claiming the insurance money shall, within sixty days after the claim is adjusted, give sufficient security to the company that the money shall be so expended, or unless in the meantime it shall be settled and disposed of amongst the contending parties to the satisfaction of the company (s. 83).

The landlord is not entitled under this Act to rebuild and then claim the insurance money; and, moreover, he must, to get the benefit of it, make a distinct request to the company to apply the money in rebuilding before they have settled with the tenant insuring. If the company refuse to act on his request he may get a mandamus to compel them. The expression "house or building" does not include trade fixtures put up by the tenant and removable by him. Therefore, where such fixtures are separately insured by the tenant and are destroyed by fire, the landlord is not entitled to have the insurance moneys laid out in reinstating them under the Act; and it is immaterial that the tenant has covenanted to deliver up such fixtures at the end of the term; because that covenant does not make them part of the house or building, but merely gives a personal right to the landlord to sue the tenant for breach of contract should he not deliver them up (*ex parte Goreley*, 34 L.J., Bk. 1). This case

also decided that though the greater part of the Act is of a local nature, yet s. 83, with which we are now concerned, extends to the whole kingdom ; a decision, however, the correctness of which was doubted in *Westminster Fire Office v. Glasgow Provident Society* (13 App. Cas. 699).

There are not a great many reported decisions on the subject of this covenant. Those which are to be noted chiefly turn upon the effect of not insuring. Thus, it has been held that it is a breach of a covenant to insure if the premises are uninsured for however short a period, and though no fire happen. The breach is, too, a continuing breach. A covenant to insure and keep insured the premises in the joint names of lessor and lessee is sufficiently performed by insuring in the name of the lessor alone ; but not by insuring in that of the lessee only, even though the lessor sees and approves of the policy and afterwards accepts rent. The breach being a continuing one such acceptance only operates as a waiver of the breach up to the time of the acceptance.

So it is a breach if the insurance is to be in the names of the lessors, and the tenant takes out a policy in their and his names.

So strictly has this covenant been construed that it is a breach to omit to insure even though there is an existing policy covering the greater part of the premises, and though at its

expiration the tenant effected a new policy on the whole of the premises at the stipulated amount.

Where a lessor has led the lessee to believe that he has insured, *e.g.*, in a case where he has the option of doing so if the tenant did not, he cannot afterwards treat the tenant's omission to insure as a cause of forfeiture.

The case of *Logan v. Hall* (4 C.B. 598) is instructive on this subject.

There the sub-lease contained a covenant to insure which was practically identical in terms with a covenant by the lessee in the superior lease. The latter covenant not having been performed, the superior landlord re-entered and forfeited the superior lease. The lessee then attempted to recover from the sub-lessees, as damages for breach of their covenant, the loss of the lease. But it was held that such loss was occasioned by the lessee's own default, and was not the natural result of the sub-lessees' breach of *their* covenant to insure. Though the sub-lessees had notice of the covenant in the head lease, there was no covenant by them to indemnify the lessee against breaches of his own covenant.

The measure of damages for breach of covenant to insure.—The measure of damages for breach of covenant to insure varies according as there has or has not been a loss. *Before* loss, the measure is the loss to the reversion by the non-

existence or lapse of the policy, viz., the cost of taking out a policy, or of renewing a lapsed one on payment of arrears. If the policy has not lapsed, but has been kept on foot by the landlord, his damages for breach of the covenant to keep insured would be the amount of the premiums he has paid.

After a loss has taken place, the measure of damages is the exact value of the property lost which ought to have been insured (Foa, L. and T., 2nd ed., p. 189).

(e) Covenant not to Assign, etc.

A very important covenant by the lessee is that by which he undertakes not to assign or sub-let the premises. There are several varieties of this covenant, the most comprehensive being that which precludes him from assigning or sub-letting, or parting with possession of the whole or any part of the demised premises ; to which is usually added "without the lessor's written consent." The latter clause is, however, very often qualified by the addition of some such words as these, *e.g.*, "such consent not being arbitrarily or unreasonably withheld," or "not being arbitrarily or unreasonably withheld in the case of a responsible tenant being proposed." Litigation has taken place on the meaning and effect of nearly every one of these phrases, and the covenant is a fruitful cause of dispute between landlords and tenants,

being often used by an arbitrary landlord as a covenant for penalising his tenant.

Interpretation of this Covenant.—If the covenant is simply not to *assign* the premises without license it is broken if the lessee without such license parts with the demised premises for the whole of the residue of his term; *e.g.*, if he grants what purports to be a sub-lease, equal to or exceeding in duration the term of the lease (see *ante* pp. 2, 3), at any rate where the sub-lease is by deed. It is otherwise, apparently, if it is not by deed, as the sub-lease could not in such case operate as an assignment; an assignment of a lease for any term requiring a deed (8 and 9 Vict., c. 106, s. 3).

The assignment must be, in fact, a valid assignment. The execution of an instrument which purports to be an assignment, but does not legally operate as such, will not amount to a breach of this covenant. The assignment must, it seems, be a *legal* as distinguished from a mere *equitable* assignment, *e.g.*, such as is created by the deposit of the lease as security for a loan, whether with or without a memorandum or agreement to execute a legal assignment.

But it has been held in the recent case of *Gentle v. Faulkner* (68 L.J. Q.B. 848) that a declaration by a lessee that he would hold his lease in trust for his creditors amounted to a breach of covenant not to assign.

An advertisement to assign is not a breach of the covenant, if no assignment takes place.

Again, the assignment must be voluntary, and not by operation of law only. If involuntary, as by bankruptcy, which causes the lease to vest in the trustee in bankruptcy, or, if the lease is taken in execution, there is no breach of the covenant.

A *sub-lease* is not a breach of a covenant not to assign, but if the covenant is "not to assign or otherwise part with the premises, or any part thereof for the whole or any part of the term," this would clearly include a sub-lease.

On the other hand, a covenant not to sub-let will prevent an assignment, or even a yearly letting; and if the covenant be "not to sub-let the premises or any part," it seems that this will include *letting lodgings*.

Letting a person into possession of premises under a contract of purchase is not a breach of a covenant not to assign or underlet (*Horsey Estate, Limited v. Steiger*, 1899, 2 Q.B. 79).

A covenant not to assign, underlet or part with possession is not broken by allowing other persons merely to use the premises, the lessee remaining in possession (see *Peebles v. Crosthwaite*, 1897, 13 Times L. Rep. 198).

The *bequest* of a lease is, according to the better opinion, not a breach of a covenant against assigning, which must, it seems, mean an assignment by act *inter vivos*.

License to assign or sub-let.—As already mentioned the covenant is usually not to assign, etc., without the lessor's license. The effect of a license is that, unless otherwise expressed, it extends only to the actual assignment or underlease, for which it is asked, and does not do away with the necessity for a fresh license on each future assignment or underlease (22 and 23 Vict., c. 35, s. 1).

Where the requirement of a license for the assignment, etc., is qualified by the addition of the words, "such license or consent not being unreasonably withheld"—their effect is this, viz., the lessee cannot sue the lessor if the latter arbitrarily withholds his consent, but is justified in assigning, etc., without it (*Treloar v. Bigge*, L.R. 9 Ex. 151; *Sear v. House Property and Investment Society*, L.R. 16 Ch. D. 387).

What is an "arbitrary or unreasonable" refusal is not easy to define, but in the following cases the refusal was held not to be arbitrary, viz., where the lessor refused because he thought the property was about to be acquired by a public body (*Treloar v. Bigge*, *sup.*), and where the refusal was on the ground that the assignment was for objects other than those for which the lease had been granted (*Harrison v. Barrow-in-Furness Corporation*, 63 L.T. 834). On the other hand, in the recent case of *Bates v. Donaldson* (1896, 2 Q.B. 241), it was held

that for the lessor to refuse his consent because he wished to obtain possession of the premises for himself was unreasonable. It was not, said Lord Justice Smith, the true reading of that clause that permission could be withheld in order to enable the lessor to regain possession of the premises before the termination of the term. It was inserted in order to protect the lessor from having his premises used or occupied in an undesirable way, or by an undesirable tenant, and not in order to enable the lessor to, if possible, coerce a tenant to surrender the lease so that the lessor might obtain possession of the premises.

But, although under a proviso of this kind the lessor's right of withholding consent to the assignment, etc., is restricted, yet the tenant is not entitled to assume that he will obtain the consent as a matter of course. Therefore, if he omit to ask for the license, either through inadvertence or some other cause, however innocent, and proceed to assign without it, he commits a forfeiture which the lessor is entitled to enforce, and the tenant can get no relief in such case under the Conveyancing Act, 1881 (see s. 14, sub-s. (6) (i)), even though no damage is shown to have been caused to the lessor.

Even the general jurisdiction of Courts of Equity to relieve in cases of mistake will not extend to cases where the forfeiture was caused not by *mistake*, in the proper meaning of that

word, but by forgetfulness or negligence on the part of the lessee or his agent (see *Barrow v. Isaacs* (1891), 1 Q.B. 417). There a sub-lease was granted without license, the lessee's solicitor forgetting to look at the superior lease which contained a covenant against sub-letting. Although the license was not to be withheld unreasonably in case of a respectable tenant, yet the omission to ask for the license was held to be a cause of forfeiture against which no relief could be given (*ib.*; and see to the same effect, *Eastern Telegraph Company v. Dent*, 1899, 1 Q.B. 835).

Fine for giving license to assign. — The question whether the lessor can demand a fine, or other pecuniary consideration, as a condition of granting license to assign, etc., is now practically set at rest by s. 3 of the Conveyancing Act, 1892, which provides that in all leases containing a covenant, condition, or agreement of the kind now under discussion, such covenant, etc., shall, unless the lease contain an express provision to the contrary, be deemed to be subject to a proviso that no fine or sum of money in the nature of a fine shall be payable for the license or covenant, but that proviso is not to preclude the right to require payment of a reasonable sum in respect of any legal or other expense incurred in relation to such license or covenant.

This enactment is not, it seems, retro-

spective—*i.e.*, it will not apply to leases made before 20th June, 1892.

Measure of damages for breach of covenant against assigning, etc.—In *Lepla v. Rogers* (1893, 1 Q.B. 31), it was laid down by Hawkins, J., that the damages need not be such as inevitably resulted from the breach. In that case the premises were sub-let to a person who, to the knowledge of the sub-lessor, intended to carry on there a dangerous trade, with the result that they were damaged by fire, arising from such user. It was held that the fire was the natural result of the breach of the covenant. Generally speaking, the measure of damages would seem to be what it would cost to put the landlord in the same position as if the covenant had not been broken; for the assignee or sub-lessee may be worthless to distrain on, or otherwise may be a person of inferior pecuniary ability.

No relief against forfeiture for assigning, etc., without license.—No relief against forfeiture on the ground that the lessee has assigned or sub-let without license can be obtained under the Conveyancing Act, 1881; see s. 14, sub-s. (6) (i). But a forfeiture on this ground may be waived by the acceptance by the lessor, with knowledge of the breach, of rent subsequently accruing due.

A waiver, however, of the benefit of a covenant or condition in a lease on the part of the lessor only extends to the particular breach to which it specially relates, and is not a general waiver

of the benefit of such covenant or condition unless an intention to that effect appears (23 and 24 Vict., c. 38, s. 6).

Effect of verbal license to assign.—If a license to assign is by the lease required to be in writing, a verbal consent is not sufficient, but if a verbal consent is given it may not be used as a trap to ensnare the lessee, otherwise, the latter will be entitled to relief on the ground of fraud.

What consent required in case of agreement for sub-lease.—Where there is an agreement for a sub-lease it is very commonly stipulated that it shall contain the like covenants, etc., as are in the superior lease. In such a case the consent (if any) required to an assignment will be that of the sub-lessor (see *Williamson v. Williamson*, L.R. 9 Ch. 729); but the contract may be so worded as to require the consent both of the sub-lessor and the head-lessor (see *Haywood v. Silber*, 30 Ch. D. 404).

Other Points.—On the sale of a lease which contains a covenant not to assign, etc., without license, it is the vendor's duty to procure the license, though not, it seems, to take legal proceedings for that purpose.

As to whether a covenant not to assign, etc., is one which "runs with the land" so as to bind the assigns whether named or not, see *post*, Chap. VIII.

Covenant not a "usual" one.—A covenant not to assign, etc., is not a "usual covenant," and under an agreement for a lease to contain the usual covenants the lessor cannot insist on such a covenant being inserted in the lease.

(f) *Covenants for Working the Property Demised.*

(i.) *Agricultural Covenants.* — Agricultural leases usually contain special covenants with regard to the cultivation and user of the demised property. Any such special covenant will supersede the obligation implied by law on tenants of farms (see *ante* pp. 128-9), and also those which local custom may cause to attach.* But a local custom which is not inconsistent with a special covenant will remain in force (see the often cited case of *Tucker v. Linger*, 8 App. Ca. 508). There there was a custom under which a farm tenant was entitled to remove and sell for his own benefit all flints turned up in the ordinary course of ploughing. Now, technically, flints would be minerals, and the lease contained a reservation of minerals to the lessor, and a special covenant by the tenant to cultivate according to the best system, and

* It is suggested in Woodfall, L. and T. (16th edition, p. 644, note (a), that the legal obligation to "cultivate" imposed on a farming tenant, *apart from express contract*, requires him to cultivate properly, notwithstanding agricultural depression rendering it ruinous to do so, though it is not technically *waste* (see *ante* p. 180) to leave land uncultivated.

to allow the lessor to take away all minerals. It was, however, held that, even assuming flints to be minerals, there was no substantial inconsistency between the custom and the special covenant.

Custom of the Country.—A covenant, whether express or implied, to cultivate according to the “custom of the country,” means according to the usage of the neighbourhood at the time of any alleged breach of such covenant, and not necessarily a custom from time immemorial; but it must be the usage of the neighbourhood and not that of any particular estate however extensive.

It is not sufficient to show a custom—*e.g.*, eight miles away—and infer its application to the particular district, but it must be proved that it extends to that district. No precise course of husbandry is meant so long as the limits of the prevalent usages of the neighbourhood are observed. Thus, while there may be no definite custom as to the proportion of land to be allowed in tillage at one time, or as to the amount to be spent in manure to be consumed every year, a tenant will be going contrary to the custom in tilling half his farm if no other farm in the district tills more than a third, and many till only a fourth. The custom must be certain and reasonable.*

* See as to Custom of the Country, Wright's “Law of Landed Estates,” pp. 113, *et seq.*, and the collection of Customs of the Country in the same work, pp. 225-315.

*Construction of Special Covenants as to
Cultivation.*

An agreement to cultivate and manage a farm in the same way as the former tenant managed it, has been construed to mean in the way in which it actually was managed by the outgoing tenant at the time when the new tenant came in, and not according to the strict terms of the former's lease.

A covenant to cultivate on the four-course system means so far as is universally obligatory by the custom of the country, which need not be too strictly adhered to, having regard to the difference of opinion as to the system, and what constitutes a breach of it (*Newson v. Smythies*, 1 F. and F. 477; *Rankin v. Lay*, 29 L.J. Ch. 739, per Lord Campbell). Again, the conversion of a farm into a market garden with glass houses for the cultivation of hot-house produce is not a breach of a covenant to "cultivate in a husbandlike manner, according to the best rules of husbandry practised in the neighbourhood," where it is proved that other farms in the neighbourhood have been similarly converted as the most profitable mode of cultivation (*Meux v. Copley*, 1892, 2 Ch. 253).

But to convert pasture into arable is certainly a breach of a covenant to manage pasture, besides amounting to waste (see "Waste," *ante* pp. 179 *et seq.*).

Sometimes the covenant is not to plough up ancient meadow, and if done to pay an additional yearly rent ; in this case the additional rent is regarded as liquidated damages for the breach.

Where the tenant covenants not to sow the land with more than two grain crops during four years, this applies to any four years of the term, and not only to each successive four from the beginning of the tenancy.

But if the tenant covenants to lay on the land two sets of manure within the last six years of the term, the latter of such sets to be laid on within the last three years, he may lay on both sets within the last three years.

Covenant not to remove hay, etc.—One of the commonest farming covenants is that by which the tenant undertakes not to remove hay, straw, manure, etc., from the land. This must be made the subject of express stipulation, except, perhaps, as to manure, the removal of which has been held to be a breach of the *implied* obligation to manage a farm in a husbandlike manner (*Powley v. Walker*, 5 T.R. 373).

It has been held that a covenant not to sell or remove hay, straw or manure grown or produced on the farm under the increased rent of £10 per ton for every ton sold or removed, gives the lessee the right to sell, etc., on payment of the increased rent.

A covenant not to remove during the last year of the term any hay, straw, etc., grown on the farm, is broken by the removal of hay, etc., grown at any time during the term, and not only that arising during the last year of the tenancy.

A covenant not to remove hay, etc., will prevent the tenant removing it after the end of the term; and where the covenant is not to remove it during the term, the term is deemed to last during such further time as the tenant is entitled to remain in possession, *e.g.*, by virtue of a custom giving him the right to remain for the purpose of threshing out crops.

A covenant not to remove manure from a farm means all manure produced on the farm, whether by cattle belonging to the tenant or not, and even though fed with provender from elsewhere (*Hindle v. Pollitt*, 6 M. and W. 529).

A covenant not to remove hay, straw or other dry fodder, includes produce other than fodder strictly so called, *e.g.*, hay unfit for cattle to eat.

Where, as is common, the covenant is not to remove hay, etc., without returning an equivalent in manure—the tenant need not bring manure on to the land before he removes any hay, etc.; but, after the end of the term, he, or any purchaser from him, may be required to do so by a succeeding tenant—and, in the case of the

purchaser, even though the latter had no notice of the covenant.

A covenant to return the value in manure of hay, etc., sold or removed, binds the tenant to return the full value of the hay, etc., sold, and not the value of the manure it would have made.

It is not unusual for an outgoing tenant to be under a covenant with his landlord to leave the manure made on the farm to be purchased by the incoming tenant at a valuation. Where this is the case, the outgoing tenant has, in the meantime, the right to keep the manure on the farm, and retains the possession of and the property in it; so that the incoming tenant could not remove or use it before valuation without being liable in trespass to the outgoer.

Covenant not to remove, etc., on whom binding.—A covenant or custom binding the tenant not to remove from the land any hay or straw, grass or grasses, turnips or other roots, or any other produce of such lands, or any manure, compost, ashes, seaweed, or other dressings, is binding upon any person to whom such crops, etc., are sold by the tenant, as well as an assignee of his effects under a bill of sale, and also his trustee in bankruptcy, even though the latter has disclaimed the lease; and also to a purchaser from the sheriff under an execution against the tenant's effects (see *post*), but not to a purchaser under a *distress* sale by the *landlord* (see 56

Geo. III., c. 50, s. 11; *Hawkins v. Walrond*, 1 C.P.D. 280).

Effect of execution against tenant. Provisions of 56 Geo. III., c. 50.—By this Act (sometimes cited as the “Sale of Farming Stock Act, 1816”), where the interest of a tenant is taken under an execution, the sheriff, in selling, may not, in any case, allow any “straw threshed or unthreshed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or seaweed,” to be removed; nor, where there is a covenant against removing them from the demised land, may the sheriff, with written notice of such covenant, allow any hay, grass or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables, being produce of such lands, to be removed therefrom contrary to such covenant (s. 1). It is the tenant’s duty to give the sheriff written notice of any such covenant, and the sheriff’s duty to send written notice of the seizure to the landlord (s. 2). But the sheriff may dispose of any such crops or produce to a purchaser who shall agree in *writing* with the sheriff to use them upon the land in accordance with any covenant or written agreement to that effect in the demise, or if there be no such covenant or agreement, then in accordance with the custom (if any) of the country (s. 3). Any such purchaser would be entitled to occupy barns, etc., on the demised premises for the purpose

of consuming the crops, etc., after the sale (*ib*). The Act does not extend to any straw, turnips or other articles which the tenant may remove from the farm consistently with some contract in writing (s. 8).

Section II of this Act, which prohibits any purchaser, etc., of a tenant's crops from taking, using or disposing of them otherwise than as the tenant could himself have done under his lease, applies to a purchaser in the ordinary way, and not only to one who buys from the sheriff under an execution (see *Wilmot v. Rose*, 3 E. and B. 563).*

Remedy for breach of agricultural covenants.—If the tenant fails to carry out his farming covenants, the landlord's remedy is by action for damages for the breach—in which the measure of damages is the loss to the reversion, unless the lease fixes any sum by way of liquidated damages. In case of covenants, either expressly or impliedly *negative*—*e.g.*, a covenant to consume hay, etc., on the land, imports an undertaking not to remove it—the landlord may obtain an injunction to restrain his tenant from committing a breach. But positive covenants of this kind, *e.g.*, to cultivate, either generally or in a particular manner, will not be ordered by the Court to be speci-

*As to distress upon a tenant's crops sold under an execution, see s. 6 of this Act, and *post*, Chap. VI., "Distress for Rent."

fically enforced, and the only remedy of the landlord for their breach is an action for damages. Breach of these covenants may also involve a forfeiture of the lease (see *post*, Chap. X.).

(ii.) *Mining covenants*.—The obligation to work a mine can only arise from an express covenant, there being no implied duty on the part of a tenant to work it. On the other hand, a lease of land without mention of mines or quarries gives the tenant no right to open mines or quarries, but only to work such as are already open at the time of the demise.

And where there is a lease of land, “and all mines therein,” if the land has then open mines the lease will only extend to them; but if none are open then the lessee under such a lease may open them and enjoy the benefit thereof.

Under a lease of two seams of coals, and all other the seams of coal under the D. Estate, the tenant would be entitled to open all the unworked seams.

A mining covenant may be either absolute or qualified. In the former case the lessee would be bound to work the mines even at a loss. It is therefore advisable from the lessee's point of view to qualify his undertaking to work by the addition of some such words as “so long as the mine is fairly workable,” or “to the fullest practicable extent consistent with the means of sale of the produce,” or “in the best

and most effectual manner, to the best advantage, and according to the common mode and usual practice of carrying on all coal works or collieries with effect."

Under the latter covenant it has been held that it is sufficient to follow the common mode and usual practice, whether it be the best possible mode of working or not (*Lord Abinger v. Ashton*, L.R. 17 Eq. 358; see *Foa L. and T.*, 2nd ed., p. 223).

So under a covenant to work "efficiently and regularly according to the best and most approved mode," although sinking pits may be the "best and most approved mode" of working, the tenant may work by instroke if it is clear that the lease does not contemplate the sinking of pits (see *Wheatley v. Westminster Brymbo Coal Company*, L.R. 9 Eq. 538).

A covenant to work in a proper and workmanlike manner, though it obliges the lessee to work, even at a loss, does not imply that he must work continuously.

A covenant to work a mine continuously in the most proper and effective manner obliges the lessee to work it, although the lease reserve what is called a "dead rent," that is a minimum rent to be paid by the lessee, and to be increased by royalties upon getting minerals beyond a certain amount. The lessee cannot in such a case elect to pay the dead rent and not work the mine, or not to work beyond the

amount of such rent (see per Jessel, M.R., in *Kinsman v. Jackson*, 42 L.T. Rep., at p. 80).

But if the object of the covenant is to secure the payment of a minimum rent, the lessee may either pay that rent without working, or work only enough to produce it; but he must continue to pay the dead rent, even though the minerals be exhausted. Where a tenant covenants to dig, *e.g.*, not less than 1,000 tons, nor more than 2,000 tons of clay a year, paying a royalty, but no dead rent, the obligation to dig the minimum number of tons only exists so long as there is any clay upon the land.

A covenant to "win" ore means to put the ore in such a state that continuous working can go forward in the ordinary way (see *Lewis v. Fothergill*, L.R. 5 Ch. Ap. 106*n*, 111).

Remedies for breach of mining covenants.—As in case of agricultural covenants, no injunction can be granted to enforce specific performance of mining covenants; but an injunction may be granted to restrain the breach of a covenant either expressly or impliedly of a negative character, or an act likely to produce irreparable injury. The only remedy of the lessor for breach is, apart from forfeiture, an action for damages, the measure of which is apparently analogous to that in respect of the breach of a covenant to build—that is, the plaintiff is entitled to have the damages assessed at the pecuniary amount of the difference between

the position of the plaintiff upon the breach of covenant and what it would have been if the covenant had been performed (see the rule explained as to building covenants in *Wigsell v. School for Indigent Blind*, L.R. 8 Q.B.D. 357).

As to quarries.—Covenants with regard to working quarries are construed by the same rules as are applicable to mining covenants.

(g) *Covenants as to Trading, etc., on the Demised Premises.*

In the absence of express stipulation a tenant may use the demised property in any way that is not illegal or a nuisance, and a contract to grant a lease of “business” premises gives the tenant the right to call for a lease containing no specially restrictive covenants. Usually, however, a lease of house property contains either a general covenant not to use the premises for any trade or business, or else prohibits the carrying on there of specified trades. On the other hand, in some cases the lessee covenants to carry on or exercise some particular trade or calling upon the demised premises.

(i.) *Covenants against trading, etc.*—A covenant not to carry on any “business” would include both trades and occupation, other than *trades*, strictly so called, which imports buying and selling. But a covenant against carrying on a trade would receive its strict interpretation.

A "business" may be carried on though no profits are made or payments received.

Keeping a school or a dancing academy, though no complaint is made by neighbours; using a house as a boarding house for scholars in connection with a school (*Hobson v. Tulloch*, 1898, 1 Ch. 424); keeping a hospital, whether free or not; or a home for working girls; or an "institution for the education of daughters of missionaries," have all been held to be businesses within the meaning of a covenant not to carry on a trade or business, or to use premises otherwise than as a private house. Probably letting lodgings, if systematically done as a business, would be within a covenant of this kind. A sale by auction on the premises of the furniture therein is not a breach of a covenant to use a house only as a private house.

A covenant not to use, or allow to be used, premises for trade or business refers to intentional, not accidental, user, in a manner contrary to the covenant.

A covenant not to convert premises into a shop may be broken by using the premises as a shop though no structural alteration of the premises be made (*per* the Court of Appeal in *Wilkinson v. Rogers*, 2 De G., J. and S. 62).

A covenant to use premises only as a private club is broken by holding advertised boxing

competitions there (see recent case of *Seaward v. Paterson*, 13 T.L.R. 525).

A covenant not to carry on a specified trade or trades will always be strictly construed, and the maxim *expressio unius exclusio alterius* would be applied; that is, all trades not specified in the covenant are excluded from its operation, in other words, may be carried on.

The principle has even been carried so far as to allow of a part of the prohibited trade being exercised by a person who carried on a business really distinct, though it included the sale of articles which formed part of those sold in the covenanted trade (see *Stuart v. Diplock*, 43 Ch. D. 343).

But there must be a really separate business and not a mere colourable sale of other articles for the purpose of concealing the sale of those which are within the covenant.

Again, the carrying on of the prohibited business as subordinate or ancillary to another business is nevertheless a breach of the covenant (see *Buckle v. Fredericks*, 44 Ch. D. 244; *Fitz v. Iles* (1893), 1 Ch. 77).

But a covenant not to carry on a "similar" trade to that of some other person does not prevent the lessee carrying on one which has some similar features, but is not in the main a similar business, *e.g.*, a publican commonly sells tobacco, but his business could hardly be called similar to that of a tobacconist.

Under a covenant not to sell certain articles on the demised premises, there is a breach if orders for goods are received there, *e.g.*, a coal or wine office, though the goods are delivered from a warehouse or depot situated elsewhere. A sale in a covenant of this class means a sale to the public, and carrying on a private club where liquors are sold only to the members is not a breach of a covenant against selling spirituous liquors.

So a covenant not to use premises as a *beer-house* or *public-house* is not broken by using them as a private hotel where resident guests only are supplied with liquor, or by selling liquors for consumption only off the premises. But a *beer shop* includes both an "on" and an "off" trade, as also does the trade of a "vintner."*

Covenants against noxious trades. — A common covenant is not to carry on any noxious or offensive trade, or business, or any that may be a nuisance to the adjoining tenants or neighbours.

It is not a breach of a covenant of this kind to use the premises as a public-house; or to carry on a hospital or private lunatic asylum. But in *Tod Heatley v. Benham* (40 Ch. D. 88), where the covenant was not to carry on certain specified trades, or any other noisome

*As to the construction of a covenant by a landlord not to allow a certain trade on "adjoining premises," see *7ale v. Moorgate Street, etc., Buildings* (80 L.T. 487).

or offensive business, nor to suffer anything to grow to the "annoyance, nuisance, grievance, or damage" of the lessor, or the neighbouring tenants—it was held that a hospital for diseases of the nose, ear, skin, fistula and other diseases, was within the covenant, practically by reason of the words, "annoyance, etc." "Neighbouring tenants" in this covenant includes other than those on the lessor's own estate (*Tod Heatley v. Benham* (sup.) ; see *Wood v. Cooper* (1894), 3 Ch. 671).*

Lessee bound by restrictive covenants of lessor.—A lessee, though he has not himself entered into any restrictive covenant as to user of the premises, is nevertheless bound by any which his lessor may have entered into with third parties. The lessee is deemed to have "constructive notice" of any such covenants, even though in the absence of special contract he cannot inquire into his lessor's title. If A sells a freehold house to B, and B covenants with him not to use it for a certain trade, and B afterwards lets the house to C, who has no notice of the covenant, C is nevertheless bound by B's covenant, and if he should carry on the prohibited trade he could be restrained by injunction at the suit of A (see *Fielden v. Slater* L.R. 9 Eq. 523). Where private houses, are built in blocks it is common to make

*As to the business of fish-frying, see *Duke of Devonshire v. Brookshaw* (81 L.T. 83).

the lessees of each covenant not to use it otherwise than as a private house, and if a person takes one of the houses on the faith of a representation by the landlord that all the other houses are similarly let, he could restrain the lessor from authorising any of the houses in the block to be used for the purpose of trade (see *Spicer v. Martin*, 14 App. Ca. 12). See further, *post* p. 238, "Remedies for Breach of Covenant."

A sub-lessee is bound by restrictive covenants entered into by the superior landlord, though unknown to himself and the sub-lessors; but is not bound to take steps to compel their enforcement (*Hall v. Ewin*, 37 Ch. D. 74).

Waiver of breach of covenant.—A covenant against trading, etc., as distinguished from a covenant not to erect a particular kind of building, is one the breach of which is a continuing breach; still, the breach may be waived by the lessor consenting to it, or by receiving rent afterwards with knowledge of the breach, or by allowing the tenant to spend money on the demised premises for the purpose of adapting them for trade or in any way not sanctioned by the covenant.

Merely lying by, however, with knowledge of a breach of covenant of either kind, will not preclude the landlord from taking advantage of it to enforce a forfeiture, unless he has, in fact, acquiesced in the breach.

But waiver of a continuing breach may be constituted by conduct on the part of the lessor, which would not amount to waiver of a definite breach.

License to commit breach. — Sometimes the covenant is not to carry on a certain trade without the license of the lessor. Where this is so, if the lessor gives a license it only extends to the particular occasion on which it is given. A license to carry on the specified trade will not authorise any other trade being carried on. To grant a sub-lease authorising a particular trade is a breach of a covenant not to carry on a trade, etc., without the lessor's license.

Remedies for breach of covenant. — The lessor has an action for damages for breach of a covenant of this kind ; the measure of damages being the diminution in the value of the reversion ; or he may obtain an injunction to stop the breach, without proof of damage ; or treat it as a cause of forfeiture. The action on the covenant is also sometimes available by one tenant against another tenant of the same landlord, *e.g.*, in cases where premises are let by a common owner to different tenants, each of whom is under a restrictive covenant as to user of his particular premises. Here each tenant is *prima facie* liable only to his own landlord in respect of his own user. But if his lease gives him the right to go against any of the other tenants, or if from all the

circumstances a right to do so may be implied, as where it is for the common benefit that such covenants are entered into, it seems that each tenant can sue the other or enforce against him the performance of the covenant (see *Nottingham Patent Brick Company v. Butler*, 15 Q.B.D. 261).

A lessee could also enforce these covenants against his lessor, that is, he could prevent him afterwards letting or dealing with any part of the property so as to interfere with the restriction in the covenant. But where restrictions are imposed by an owner on several tenants, not for their mutual benefit, but for his own, as when he retains part of the land parcelled out, he only can enforce the covenant against such individual tenant. They cannot enforce them *inter se*.

In *Taite v. Gosling* (11 Ch. D. 273), it was held that restrictive covenants entered into by owners of land, their heirs and assigns, against adjoining owners, their heirs and assigns, might be enforced by the lessee of one of the owners as being an "assign."

(ii.) *Covenant to carry on a particular trade on the demised premises*.—A covenant to carry on a particular business, e.g., that of a hotel, cannot be specifically enforced, but damages only for its breach can be recovered, while the breach may entail a forfeiture.

A covenant not to carry on any other busi-

ness than (*e.g.*) that of an innkeeper does not bind the covenantor to carry on that business, but only prevents him carrying on any other.

Covenants affirmative in form, but negative in substance, may be enforced by an injunction against the breach of the negative undertaking.

A covenant to do no act by which the license may be imperilled is one the breach of which may be restrained by injunction; but a covenant by a tenant to do his best to extend the business of the house does not oblige him to reside there continually and personally manage the business.*

Tying covenants.†—Leases by brewers to publicans usually contain a covenant by which the tenant undertakes to buy his beers, etc., only from the lessor. On the other hand the lessor may agree to take less rent so long as the lessee so deals with him. The two covenants are, however, distinct, and the lessee cannot by paying more

* For the construction of a covenant by the lessee of a public-house to conduct his business so as to afford no ground for discontinuing any of the licenses, and not to do or suffer anything contrary to the licensing laws, or whereby any of the licenses might be withdrawn or withheld, see *Bryant v. Hancock* (1898, 1 Q.B. 716; 1899, A.C. 442), where it was held that the obligation of the covenant extending to the lessee's assigns did not include the under-lessees of the latter, and that the assignees of the lease were not liable for a breach by their under-lessee of the latter part of the covenant, whereby the licenses had become forfeited.

† A tying covenant increases the value of licensed premises and on a compulsory purchase under the Lands Clauses Act the compensation to the brewers may be

rent acquire the right to deal elsewhere. The tenant is only bound to take good and suitable beer from the lessor. He may buy through an agent.

Whether such a covenant "runs with the land."

—A very important point in the construction of a tying covenant is to determine whether the covenant is one which "runs with the land," that is to say, whether it is binding on assignees of the lease, and enforceable by assignees of the reversion. There have been several recent cases, and it is not easy to lay down any general rule as to this; each case must be governed by the wording of the particular covenant. One thing is, however, clear, and that is that the benefit of such a covenant is assignable, if appropriate words be used—see *Clegg v. Hands* (44 Ch. D. 503), where the lessee of a public-house covenanted with the lessors, a firm of brewers (the term "lessors" including their heirs, executors, administrators and assigns, and the term "lessee" including

estimated with regard to this increased value; but in assessing the rateable value of licensed premises, the existence of a tying covenant cannot be considered. See as to the circumstances under which the existence of tying covenants may be taken into consideration for the purpose of assessing the value of licensed premises, the recent cases of *White v. Bradford-on-Avon Assessment Committee* (1898, 2 Q.B. 630; and *In re London County Council v. City of London Brewery Company* (1898, 1 Q.B. 387). If a house is bought as a free house, the existence of a tying covenant of this kind entitles the purchaser to repudiate the purchase, and recover his purchase-money, even though the lease was read over by the auctioneer at the time of sale.

his executors, administrators and permitted assigns), that he would only sell beer bought from the lessors either alone or jointly with any person who might become partners with them. The lessors assigned their business and the public-house, together with the benefit of the lessee's tying covenant, and ceased to carry on business at their brewery. An action having been brought to restrain the lessee from selling any beer not bought from the assignees, it was held by the Court of Appeal that the benefit of the covenant was not restricted either to assigns carrying on the same brewer's business as the lessors, or to assigns who themselves made beer. Secondly, that the covenant was not a personal covenant incapable of assignment; but a covenant relating to the way in which the business at a particular house was to be carried on, and accordingly a covenant running with the land, and enforceable by the owner of the reversion. Thirdly, that whether the covenant was one running with the land or not, the assignee, as assignee of the benefit of it, was entitled to enforce it upon the ground that the defendant having presumably obtained a lease of the house at a lower rent by reason of the restrictive covenant, ought to be restrained from dealing with the house in a way inconsistent with that covenant.

Again, in *White v. Southend Hotel Company* (1897, 1 Ch. 767), it was held that a covenant

by a lessee of a hotel to buy wines only from the lessor (a wine merchant), his successors or assigns, though it did not *in terms* oblige the assignee of the lease to buy only from them, was, nevertheless, binding on him—the burden being held to run with the tenant's interest.

In the more recent case of *Birmingham Breweries Company v. Jameson* (67 L.J. Ch. 403), the question was whether a tying covenant of this kind was enforceable by the assignees of the reversion where they were not the successors in business of the lessor.

There the lessee covenanted that he would deal exclusively with the lessor, a brewer, or his firm, or his, or their successors in business; and by the lease the term "lessor" was defined to include, where the context would allow it, his executors, administrators and assigns. The lessor's interest became vested in the plaintiffs, who were brewers, but were not the successors in business of the lessor whose firm still carried on business as brewers. The plaintiffs contended that the tenant was bound to deal with them as "assigns" of the lessor, relying upon the interpretation clause in the lease. The tenant on the other hand claimed the right to deal still with the firm of the original lessor, who were willing to supply him. It was held by the Court that the context did not allow of the term "lessor" being construed to include his "assigns," unless they were also

his "successors in business," that there was no breach of the covenant so long as the defendant dealt with the firm of the original lessor, and that there was no obligation on him to take his beer from the plaintiffs.

Covenants against trading, etc., when considered "usual" covenants.—Covenants of this kind are not "usual" covenants, but may be so deemed in particular cases, *e.g.*, an agreement for the sale of a public-house described as held upon the "common and usual covenants" has been enforced where the lease has been found to contain a covenant against carrying on any business but that of a publican, such a covenant being inserted in the majority of public-house leases (see *Bennett v. Womack*, 3 C. and P. 96).

(h) *Covenant to Reside on the Demised Premises.*

This is a covenant sometimes found in agricultural leases; it is not a "usual" covenant; but it runs with the land, so as to be binding upon anyone whether named or not (*Woodfall L. and T.*, 2nd ed. 703-4).

(i) *Covenant to Deliver up Fixtures, etc.*

A common covenant in a lease, is that by which the tenant agrees to deliver up at the end of the term all fixtures, etc., on the demised premises; the fixtures, etc., being often scheduled to the lease. A special covenant to deliver up at the end of the term the scheduled fixtures, etc., precludes any question arising

as to what are fixtures (as to this see *post*, Chap. XIII.); and also gives a simpler and more convenient remedy to the lessor in case of their non-delivery.

Some fixtures—*e.g.*, where put up for trade or ornament—are removable by the tenant in the absence of special stipulation to the contrary; but the covenant may be so worded as to include removable fixtures, *e.g.*, a covenant to yield up the demised premises in repair, together with all *erections or improvements*.

Where the covenant to yield up in repair fixtures, etc., consists of a specific enumeration of articles commonly known as “landlord’s fixtures,” followed by general words such as “all other fixtures and articles in the nature of fixtures”—this will be construed to mean all other fixtures *ejusdem generis*, *i.e.*, landlord’s fixtures. But if general words follow a specific enumeration of both landlord’s and tenant’s fixtures, this rule cannot be applied; but the covenant must be construed according to the ordinary meaning of the words used.

If the covenant is to deliver up all erections and improvements, except certain specified articles, this will entitle the tenant to remove the specified things, even though working a certain amount of damage to the buildings, etc., to which the fixtures are attached.

Remedy for breach of this covenant.—The lessor may sue for damages for breach of this

covenant, and obtain an injunction to restrain the wrongful removal of fixtures.* The measure of damages in an action on the covenant for non-delivery of fixtures would be their value as fixtures and not as mere chattels, the value as fixtures being the amount by which the reversion is depreciated; but in the case of a nominal reversion the damage to the reversioner can be only trifling.

The covenant is not a "usual" one; but it runs with the land.

(k) Covenants as to Building.

A covenant to build or rebuild on the demised premises is not a "usual" covenant. If it is unlimited in time it is unusually restrictive, and the purchaser of a lease described as containing "no unusually restrictive covenants" would be entitled to repudiate the contract on discovering the existence of such a covenant.

This covenant will "run with the land" if the assigns are expressly mentioned.

The covenant must be strictly performed, and is not satisfied by doing repairs, unless the lessee is clearly given the option either of re-

*In the absence of a covenant the landlord's remedy for wrongful removal of fixtures would be either an action for waste or an action in the nature of trover, in which case the damages it seems would be merely the value of the fixtures as chattels (see the recent case of *Barff v. Probyn* (1895), 64 L.J. Ch. 5, per Charles, J., at p. 560; and see post Chap. XIII., "Fixtures").

building or repairing. In a covenant to build within a certain time, performance within the stipulated time would be essential, unless the landlord waived his right in this respect, as by leading the tenant to suppose that he should not insist on it (see per Court of Appeal in *Birmingham, etc., Land Company v. L. and N. W. R. Company* (1889), 60 L.T. 57).

Sometimes the covenant requires the lessee to build to the satisfaction of the lessor's surveyor. It seems that this is an absolute covenant to build, in any event, whether the lessor appoint any surveyor or not; and does not make the appointment a condition of the lessee's obligation. If, however, a surveyor should be appointed by the lessor, then he is to be satisfied. If the covenant be to build according to the directions of the surveyor, then he must be appointed and give directions before the lessee can perform his covenant.

A covenant to *rebuild* does not mean that the lessee must exactly reproduce the old building.

Covenant as to keeping building line.—Where the lessee covenants not to erect any building beyond a certain line of frontage, he may, nevertheless, put an ordinary boundary wall at the extremity of his land, but not, *e.g.*, a high wall to form the back of a greenhouse. So he cannot build out bay windows beyond the stipulated line; but the lower part of the wall of a house may project a few inches over

the line without involving a breach of this covenant.

Building agreement separable.—A building agreement relating to several plots containing the common covenant to grant a separate lease of each plot when the houses on them have reached a certain stage of building, is separable, and an assignee of the builder can enforce it as to any particular plot, although the builder may have made default in carrying out the rest of the agreement (see *Wilkinson v. Clements*, L.R. 8 Ch. 96).

Building covenant, when discharged.—Where the performance of a building covenant is rendered impossible, as by an Act of Parliament passed subsequently, the covenantor is released from his obligation (see the leading case of *Bailey v. De Crespigny*, L.R. 4 Q.B. 180). There the covenant was a negative one, viz., not to build on the demised premises. The lessee was by a subsequent Act of Parliament compelled to assign his interest to a railway company, whereby it became impossible for him to observe his covenant. It was held on the principle of *lex non cogit ad impossibilia* that the lessee was discharged from his covenant. The same rule would, of course, apply if the covenant were an affirmative one, viz., to build.

Remedies for breach of building covenants.—A covenant to build can be specifically enforced if it is strictly defined, though the more

general course is to give damages for its breach, the latter also affording a ground for re-entry under the proviso for re-entry on breach of covenants. An agreement to take a lease, and to build, may be separated—specific performance of the agreement to take the lease being granted and damages given for breach of the building stipulation.

A clearly defined negative covenant as to building may be enforced by injunction, and the same remedy is available where the covenant, though affirmative in form, involves a negative, *e.g.*, a covenant to build houses of a certain value may be enforced by an injunction restraining the lessee from building houses of a less value.

Measure of damages for breach of building covenants.—If damages for breach of a building covenant are sued for, the measure of them is not the cost of the building agreed to be erected, but the loss sustained by the lessor through the covenant not having been performed, that is, the diminution in the value of the reversion to the premises through the non-erection of the building (see *Wigsell v. School for Indigent Blind*, 8 Q.B.D. 357).*

The Proviso for Re-entry.

Practically every lease now contains a proviso for re-entry, that is a power for the lessor

* As to covenants with regard to *fences*, etc., and with regard to *game and sporting*, see *post*, Chap. VII.

to put an end to the lease on breach by the lessee of the stipulations on his part contained therein. The necessity of a proviso for re-entry lies in the fact that without it a breach of *covenant* would not entitle the lessor to claim a forfeiture of the lease, but only to sue the tenant for damages. Only for breach of a *condition*, as distinguished from a *covenant*, could the lessor re-enter without any special power being reserved to him to do so. The consideration of the technical difference between a "condition" and a "covenant," as regards the lessor's right to re-enter, is now chiefly of antiquarian interest, and it is not proposed here to do more than refer to the distinction. See Woodfall, L. and T., 16th edition, p. 328; Foa, L. and T., 2nd edition, pp. 236-8.

If there should be no proviso for re-entry the lessor's only remedy for non-payment of rent or breach of any other of the lessee's covenants would be to sue for the rent or for damages for the breach of covenant, and having obtained judgment, cause the tenant's interest to be taken in execution thereunder to satisfy the judgment debt.

Construction of the proviso for re-entry.—A proviso that on non-payment of rent, or breach, or non-observance of any of the lessee's covenants, "the term shall cease," or that "the lessor may re-enter on the demised pre-

mises and repossess or have them again, ‘as if the lease had never been made’”—means that the lease may be put an end to at the option of the lessor, *as from the time when he elects* to take advantage of the breach, up to which time the lease subsists for all purposes; and the lessor, though he elects to avoid it, will be entitled to sue for rent previously accrued, or for damages for any breach of covenant which has already occurred. But the proviso, even in the form first above mentioned, will not entitle the lessee to avoid the lease, as that would be allowing him to take advantage of his own wrong which the law will not countenance.

The proviso for re-entry should, from the landlord’s point of view, be expressed to apply in case of “breach, non-performance, or non-observance” of the lessee’s covenants. For if the word “non-performance” only be used, it is doubtful whether this would apply to “negative” covenants—which, it has been said, cannot strictly speaking be “performed”—but if the words “breach” and “non-observance,” or, perhaps, either of these words alone be used, both affirmative and negative covenants would be included (see cases cited, Foa, L. and T., 2nd ed., p. 239).

Where two or more houses are demised by one lease, subject to common covenants, and with a common proviso for re-entry, and one of the houses is underlet, the lessor will be

entitled to enforce the proviso against the under-lessee of one house for breach of a covenant relating to another.

Where a lease reserves an additional rent, if the lessee should carry on a certain trade on the premises, and contains a covenant by him not to carry it on, and there is a proviso for re-entry on breach of covenants generally, this will not entitle the lessee to carry on the specified trade on payment of the additional rent, and the right of re-entry may be enforced in case of breaches on which such additional rent becomes payable (see *Weston v. Metropolitan Asylums Board*, 8 Q.B.D. 387).

Proviso for re-entry in case of tenant becoming bankrupt, etc.—It is very common to make the proviso for re-entry apply in case the tenant should become bankrupt, or his interest should be taken in execution. If, as is usual, the proviso is to take effect in case the lessee, his executors, administrators or assigns should become bankrupt—this means in case the tenant *for the time being* should become bankrupt—so that if a lessee should assign his interest and afterwards become bankrupt, this would not entitle the lessor to re-enter against the assignee (see *Smith v. Gronow* (1891), 2 Q.B. 394).

On the other hand, if an executor to whom a term has been bequeathed by the lessee should become bankrupt, the proviso in this form will entitle the lessor to re-enter.

A proviso in a building lease that, on the lessee becoming bankrupt, the lessor may re-enter, and that all building materials, etc., on the land shall be forfeited, is bad as being contrary to the policy of the bankruptcy law, and in the event of bankruptcy the materials will go to the trustee.

A proviso in a lease to a company for re-entry in case of the company being wound up, will become operative as soon as a winding up order is made. If the proviso is for re-entry in case the company should enter into liquidation, whether compulsory or voluntary, this will entitle the lessors to re-enter upon the liquidation of the company for any cause whatever—*e.g.*, for purpose of re-construction—and not merely in consequence of insolvency (*Horsey Estate v. Steiger* (1899), 2 Q.B. 79).

The same case decided that a condition of this kind is one which runs with the land, so as to bind the assignees of the lessees.

Under a proviso for re-entry, if the lessees shall do or suffer anything whereby the premises, or any part thereof, shall either directly or by operation of law, or otherwise, however indirectly, become vested, either for the whole or any part of the term thereby granted, in any person other than the lessors—a right to re-enter will accrue if the lessees sub-let the premises (see *Dymock v. Showell's Brewery Company* (1898), 79 L.T. 329).

A proviso in a building agreement by which, in the event of the builder failing to carry out his undertaking, the land, buildings, materials, etc., shall be forfeited to the landowner, does not preclude the latter from also suing the builder for damages for the breach of the agreement (see *Marshall v. Mackintosh* (1898), 46 W.R. 580).

Who may enforce the proviso.—The proviso for re-entry, although, as already stated (*ante*, p. 251), not enforceable at the instance of the lessee, may be taken advantage of by the lessor, his heirs or assigns, or any person entitled for the time being to the reversion, whether his interest be a legal or an *equitable* one (see Conveyancing Act, 1881, s. 10).

Where a demise operates as an assignment, *e.g.*, a sub-lease by deed for the residue of the lease, the sub-lessor may yet expressly reserve to himself a right of re-entry.

A proviso for re-entry on breach of covenant, whether it makes the lease void on the happening of the breach, or only gives a right to re-enter, virtually makes the lease voidable at the option of the lessor, and he must in some way show the lessee that he intends to take advantage of the act of forfeiture by actual or constructive entry, or some equivalent act, *e.g.*, serving a writ in ejectment before the lease is actually put an end to.

But actual entry on the demised premises is

not necessary before issuing the writ in an action to recover possession (see *Ware v. Booth* (1894), 10 T.L.R 446).

See further as to forfeiture of a lease, and the circumstances under which it may be relieved against *post*, Chap. X., "*Forfeiture.*"

Execution and Attestation of Lease.

It is usual to execute a lease in duplicate—that is to say, there are two copies made, one of which is called the *Lease*, and the other the *Counterpart*. The lease is executed by the lessor, and handed to the lessee, while the counterpart is executed by the lessee, and handed to the lessor. Each then has, so to speak, his own title deed, and at the same time the document by which the other has bound himself.

What is execution.—If the lease is by *deed* the execution consists in signing, sealing and delivering it, of which the two latter are essential—the former, though usual and proper, not being it seems obligatory. The common form of executing a deed is as follows:—The parchment or paper—it is immaterial which—upon which the deed is written, has impressed upon it at the end of the body of the deed a seal, either of wax, wafer or some other material. Opposite this seal the party executing the deed writes his name, and then placing his finger upon the seal, he says,

"I deliver this as my act and deed"—without these words the deed is theoretically no deed but a writing merely. The seal may, of course, be affixed after the signature has been written, and the same formality gone through. It seems that an impression on the parchment or paper, merely with intent to seal, is considered equivalent to an actual seal, and if the attestation clause state the deed to have been sealed, it will, in the absence of evidence to the contrary, be presumed to have been sealed, although no impression appears on the parchment or paper (see "*Sugden on Powers*," 8th ed., p. 232, cited in *R. v. St. Paul Covent Garden* (1847), 7 Q.B. Rep. 238*n*).

A person unable to read or write may validly execute by sealing and delivering a deed which has been signed by another person by his direction and in his presence, and unless the former requires it, it need not be read over to him.

It is important that both parties should execute the lease whether by signing, etc., the lease and counterpart respectively, or by both executing the lease alone, which would then be properly handed to the lessee as his title deed, though producible at the request of the lessor. If the lessor should not execute the lease, there is no lease, and the lessee, though he has executed the deed, would be discharged from his covenants, whether he had, in fact, occupied

the property or not. He might, however, be liable as upon an implied tenancy with similar terms, or in an action for use and occupation (see *post*, Chap. V.).

If the lease has not been executed by the lessor, the lessee could dispute the validity of it as against an assignee of the reversion.

A lease may be *delivered* as an *escrow*, or writing, as where it is executed conditionally, *e.g.*, on payment of a premium or costs by the lessee, and the fact that it is formally executed will not prevent evidence to show that it was only executed as an escrow. Delivery of a lease as an escrow is very common; where, for instance, a lessor executes the lease and hands it to his solicitor to be exchanged for the counterpart signed by the lessee, or to be handed over on payment of moneys to be paid by the lessee, etc.*

A lease may be executed by an agent or attorney, who should either execute it in the name of his principal, or in his own name expressed to be as agent. If the lease is by *deed*, the agent must be instructed by deed. An unauthorised execution may be validated by the principal adopting and ratifying the act.

* It is not clear how far this rule applies in case of leases not by deed; but it would seem that a parol lease executed conditionally would have effect only on such condition being performed

Attestation.

Attestation of a lease, although usual and proper, is not strictly necessary, unless the lease is executed under a power, when the execution must be attested if the power requires it; but, in any case, not more than two witnesses need attest (see Law of Property Amendment Act, 1859, 22 and 23 V., c. 35, s. 12).

Registration of Leases.

Leases for more than twenty-one years, unless at a rack rent, of land situated in the county of Middlesex, and assignments of such leases, must be registered in the Middlesex Land Registry in order to give protection to the lessee or assignee against any subsequent lease or assignment in favour of him to a third person.

Leases not exceeding twenty-one years only require to be registered where the actual possession and occupation does not go with the lease.

It is doubtful whether copyhold leases require to be registered.

¶ The registration takes the form of registering a memorial of the lease or assignment, and the mode of registering is prescribed in the Land Registry (Middlesex Deeds) Act, 1891, First Schedule, and the Land Registry (Middlesex Deeds) Rules, 1892.

Provisions similar to the above exist with regard to leases of lands in Yorkshire, for details of which reference should be made to the Yorkshire Registry Act, 1884.

Again, leases, except for seven years or under, "*in possession*," of certain portions of the Bedford Level require to be registered.

It should be noted that registration of leases as above-mentioned is not necessary to the validity of the lease as between the parties to it, but only determines the priority of successive lessees or assignees, and the fact of a lease not having been registered would be no answer to an action on any of the covenants as between the lessor and lessee.

Assignments by way of mortgage require registration equally with absolute assignments; but a deposit of a lease by way of equitable security is not a conveyance within the meaning of the Registry Acts so as to need registration. Where a lease has not been registered the omission cannot be repaired by registering an assignment of it, but the lease itself must be registered. And in registering the memorial of an assignment, the parcels, *i.e.*, the description of the property leased, must be set out in full, and not described merely by reference, even where the assignment is endorsed on the lease. Provision is also made for the registration of leases by the Land Registry Acts, 1862 and 1875, and for com-

pulsory registration by the Land Transfer Act, 1897.* See further as to registration of leases, Woodfall, L. and T., 16th ed., pp. 202-206.

Costs of Lease and Counterpart.

In the absence of any agreement between the parties, the cost of the lease and counterpart, which are prepared by the lessor's solicitor, is divided thus—viz., the lessee bears the expense of the lease, and the lessor that of the counterpart. The costs of the lease, for which the lessee would be liable, do not include surveyor's charges and counsel's fees for advising on title, settling draft lease, etc., etc., and these, in the absence of express agreement to the contrary, must be paid by the person giving instructions for them to be incurred.

Although the lessee may be ultimately liable for the costs above-mentioned, the lessor's solicitor cannot make the lessee *directly* responsible to himself for them; but can only recover them from his own client, the lessor,

* Registration will be made compulsory by Orders in Council within any county or part of a county specified in such Orders on the sale of leasehold land held at the date of the purchase for more than two lives, or forty or more years unexpired (see Land Transfer Act, 1897, s. 20 (1); s. 24, and Land Transfer Rules, 1898, Rule 59). The term purchased may be either an original or derivative term, but must not be a term created by way of mortgage. A reversionary term if to take effect in possession, or within one month after the expiration of the original term, is to be added to, and treated as one with the original term for computing its length (Rule 56). The above provisions will, in the absence of anything to the contrary in the Order, extend to *grants* of leases and underleases, and the effect of any Order will be that, as re-

who in his turn may call on the lessee to reimburse him. It is, therefore, important that the solicitor should get a retainer by the intended lessee to act for him as well as for the lessor, so that, even if negotiations for the lease should fall through, he may be able to get his costs directly from the intended lessee.

Scale of Charges.

Where there is no special agreement as to the amount to be paid for the expenses of the lease, the charges which the solicitor is entitled to make are regulated by the Solicitors' Remuneration General Order, 1882. Under the Order and the Schedules thereto, two methods of remuneration are prescribed—one, according to the scale mentioned in Schedule I.—the principle of which may be roughly described as a percentage on the rental—the other, according to the scale mentioned in Schedule II.—that is, payment by items as altered by that Schedule. The

guards land in the county or part of a county comprised in the Order, an *assignment on sale* of a lease or underlease having at least forty years to run, or two lives yet to fall in, and a *grant* of a lease or underlease for a term of forty years or more, or for two lives, executed after the day specified in the Order, and capable of registration, *shall operate only as an agreement*, and shall not pass any *legal* estate to the assignee or lessee unless or until he is registered as proprietor of the lease or underlease (Rule 59). The Act has at present been put in force only in parts of the metropolis. See the provisions of the Order in Council, 28th November 1899; according to which the whole of the Metropolis will not be brought within the operation of the Act until 1st May, 1901.

former, where applicable, is compulsory in case of *completed* transactions, unless before undertaking the work the solicitor has elected to be paid according to Schedule II. The latter applies to uncompleted transactions of the kind specified in Schedule I., and to other business connected therewith not specially provided for, or where Schedule I. is not applicable.*

(i.) *Remuneration in case of Completed Transactions.*

(Schedule I., Part II.).

(a) *Scale of Charges as to Leases or Agreements for Leases at Rack-Rent (other than a Mining Lease or a Lease for Building Purposes or Agreement for the same).*

Lessor's solicitor for preparing, settling and completing lease and counterpart.

Where the rent does not exceed £100.	{ £7 10s. per cent. on the rental, but not less in any case than £5
--	---

Where the rent exceeds £100 and does not exceed £500.	{ £7 10s. in respect of the first £100 of rent, and £2 10s. in respect of each subsequent £100 of rent
---	--

Where the rent exceeds £500	{ £7 10s. in respect of the first £100 of rent, and £2 10s. in respect of each £100 of rent up to £500, and £1 in respect of every subsequent £100
---------------------------------------	--

Lessee's solicitor for perusing draft and completing	{ One-half of the amount payable to the lessor's solicitor.
--	---

NOTE.—The scale fee is only chargeable in respect of each £100 of rent, fractions of £100 not being chargeable (see *re McGarel*, 1897, 1 Ch. 400).

* These scales only regulate the *amount* of the solicitors' remuneration, and do not alter the *incidence* of the charges.

(b) *Scale of Charges as to . . . Building Leases Reserving Rent, or other Long Leases not at Rack-Rent (except Mining Leases), or Agreements for the same respectively.*

. . . Lessor's solicitor for preparing, settling and completing . . . lease and counterpart.

Amount of Annual Rent.	Amount of Remuneration.
Where not exceeding £5 . .	£5
Exceeding £5 and not £50 .	The same payment as on a rent of £5, and also 20 per cent. on the excess beyond £5
Exceeding £50, and not £150	The same payment as on a rent of £50, and 10 per cent. on the excess beyond £50.
Exceeding £150	The same payment as on a rent of £150, and 5 per cent. on the excess beyond £150.

. When a varying rent is payable, the amount of annual rent is to mean the largest amount of annual rent.

. . . Lessee's solicitor } One-half of the amount payable to . . . lessor's solicitor.
for perusing draft and completing

NOTE.—Short leases not at rack rent are apparently not included in either scale. An agreement in writing for a tenancy for less than three years is either a lease or an agreement for a lease, within the meaning of this Schedule (see *re Negus*, 1895, 1 Ch. 73). (“*Poley's Law of Solicitors*,” p. 598.)

Rules applicable to Schedule I., Part II., as to all Leases . . at a Rent, or Agreements for the same, other than Mining Leases and Agreements therefor.

1.—Where the . . . lessor furnishes an abstract of title it is to be charged for according to the present system as altered by Sched. II. (see *post*, p. 266).

2.—Where a solicitor is concerned for both
 lessor and lessee, he is to charge the lessor's
 solicitor's charges, and one-half of that of the
 lessee's solicitor.

3.—Where a mortgagee or mortgagor joins in a
 lease the lessor's solicitor is to charge £1 1s.
 extra,

4.—Where a party other than a lessor joins
 in a lease, and is represented by a separate
 solicitor, the charges of such separate solicitor are to be
 dealt with under the old system as altered by Sched. II.

5.—Where a lease is partly in consideration
 of a money payment or premium, and partly of a rent, then,
 in addition to the remuneration hereby prescribed in respect
 of the rent, there shall be paid a further sum equal to the
 remuneration on a purchase at a price equal to such money
 payment or premium.

6.—Fractions of £5 are to be reckoned as £5.

The remuneration prescribed by Schedule I.
 to this Order does not include stamps, counsel's
 fees, auctioneer's or valuer's charges, travelling
 or hotel expenses, fees paid on searches to
 public officers, on registration, or to stewards
 of manors, costs of extracts from any register,
 record or roll, or other disbursements reason-
 ably and properly paid, nor any extra work
 occasioned by changes occurring in the course
 of any business, such as the death or insolvency
 of any party to the transaction, nor does it in-
 clude any business of a contentious nature, nor
 any proceedings in any court, but it shall
 include law stationer's charges and allowances
 for time of the solicitor and his clerks, and for
 copying and parchment and all other similar

disbursements (Solicitors' Remuneration Order, 1882, sect. 4).*

(ii.) *Remuneration in case of Uncompleted Transactions.*

(Schedule II.).

This Schedule will be applicable in case of transactions to which, if completed, the above scales would apply, but which are not in fact completed, the remuneration being according to the old system, *i.e.*, payment by items, as altered by Schedule II. (General Order, clause 2 (c.), see *post*, p. 266). Such remuneration will extend to business not hereinbefore provided for, connected with completed transactions, which, however, will not include negotiations (see *re Field*, 29 Ch. D. 608; *Savery v. Enfield Local Board*, 1893, App. Ca. 218), nor the preparation and agreement for a lease, when followed by a lease, even though the agreement provides for repairs being done before grant of the lease (*re Emmanuel and Simmons*, 33 Ch. D. 40; see *Savery v. Enfield Local Board*, *sup.*), which are already covered by the scale charges for the whole transaction. But negotiations with persons other than those who ultimately take the lease would be "business which is not in

* Drafts and copies made in the course of business, the remuneration for which is provided for by this Order, are the property of the client (Solicitors' Remuneration Order, 1882, sect. 3).

fact completed," for which the lessor's solicitor would be entitled to be remunerated under this Schedule (*In re Martin*, 41 Ch. Div. 381).

Instructions for Drawing and Perusing Deeds, Wills and other Documents.

Such fees for instructions as, having regard to the care and labour required, the number and lengths of the papers to be perused, and the other circumstances of the case, may be fair and reasonable. In ordinary cases, as to drawing, etc., the allowances shall be :—

For drawing	..	..	..	2s.	per folio (72 words).
For engrossing	..	..	..	8d.	„ „
For fair copying	..	..	..	4d.	„ „
For perusing	..	..	..	1s.	„ „

Attendances.

In ordinary cases 10s.

In extraordinary cases the taxing master may increase or diminish the above charge if for any special reasons he shall think fit.

Abstracts of Title (where not covered by the above scales).

Drawing each brief sheet of 8 folios ..	6s. 8d.
Fair copy	3s. 4d.

Journeys from Home.

In ordinary cases for every day of not less than seven hours employed on business or in travelling £5 5 0

Where a less time than seven hours is so employed, per hour 0 15 0

In extraordinary cases the taxing master may increase or diminish the above allowance if for any special reasons he shall think fit.

Remuneration under Schedule II. for other matters.

Other matters, which are not included under Schedule I., and the remuneration for which will be according to Schedule II., are (*inter alia*)

mining leases, or licenses, or agreements therefor, re-conveyances, transfers of mortgage, or further charges not provided for hereinbefore, or in Schedule I., and assignments of leases not by way of purchase or mortgage (General Order, cl. 2 (c.) .)

In *re Webb, Still v. Webb* ((1897), 1 Ch. 144), where on a sale by auction of leasehold property held with other property under one lease, the purchaser was bound by condition to accept an underlease for the whole term less three days at an apportioned ground rent, it was suggested that this would be business to be charged for under Schedule II., while it was held that, at any rate, being in fact a sale, the vendor's solicitors could not have the scale charge in respect of price and a further scale charge in respect of the rent.

Other matters coming under Schedule II. would be collateral matters, and a co-lessor's costs.

Solicitor may elect to be paid by Schedule II.

The scale charges under Schedule I., where applicable, are compulsory, unless the solicitor, before undertaking the business, elects in writing, communicated to the client, to be remunerated according to Schedule II. But if Schedule I. is not applicable his remuneration will necessarily be under Schedule II., in which case no election is required.

Agreement between Solicitor and Client as to Costs.

The Solicitors' Remuneration Act, 1881, authorises solicitor and client, in respect of any business to which the Act applies, to agree in writing signed by the person to be bound or his agent, either before, or during, or after the transaction of such business, that the solicitor shall be remunerated by a lump sum, commission, percentage, salary, or otherwise, such remuneration to include, or not, as the parties arrange, out of pocket expenses of the solicitor, and such agreement may be sued on or impeached like any other agreement, and if on an order for taxation of costs, such agreement is relied on by the solicitor, the client may object to the same as unfair and unreasonable, and thereupon the taxing master shall certify the facts to the Court, which may either cancel or modify the agreement, or otherwise deal with it as the Court may think fit (see sect. 8).

Stamps on Leases.

The stamp duties payable on leases are now regulated by the Stamp Act, 1891, the Schedule to which contains the following scale of charges—

	£	s.	d.
<i>Agreement</i> for a lease or tack, or for any letting for any term not exceeding 35 years, or for any indefinite term ..	{ The same duty as on a lease for the same term and consideration (see s. 75).		

£ s. d

Counterpart or Duplicate of any instrument chargeable with any duty :

Where such duty does not amount to 5s. { The same duty as the original instrument.

In any other case 0 5 0

If executed by or on behalf of lessor, it must be stamped as the lease, or with a denoting stamp showing the lease to have been properly stamped (s. 72).

Lease or Tack :

- (1.) For any definite term not exceeding a year :

Of any dwelling-house, or part of a dwelling-house, at a rent not exceeding £10 per annum 0 0 1

- (2.) For any definite term less than a year :

(a.) Of any furnished dwelling-house or apartments where the rent for such term exceeds £25 0 2 6

(b.) Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid { The same duty as a lease for a year at the rent reserved for the definite term.

- (3.) For any other definite term, or for any indefinite term :

Of any lands, tenements, or heritable subjects :

Where the consideration, or any part of the consideration, moving either to the lessor, or to any other person, consists of any money, stock or security.

In respect of such consideration .. { The same duty as a conveyance on a sale for the same consideration.

Where the consideration, or any part of the consideration is any *rent*:

In respect of such consideration:

If the rent, whether reserved yearly or otherwise, is at a rate or average rate:

	If term does not exceed 35 years, or is indefinite.			If term exceeds 35 years, but not 100 years.			If the term exceeds 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceeding £5 per annum	0	0	6	0	3	0	0	6	0
Exceeding—									
£5 and not exceeding £10	0	1	0	0	6	0	0	12	0
£10 „ „ £15	0	1	6	0	9	0	0	18	0
£15 „ „ £20	0	2	0	0	12	0	1	4	0
£20 „ „ £25	0	2	6	0	15	0	1	10	0
£25 „ „ £50	0	5	0	1	10	0	3	0	0
£50 „ „ £75	0	7	6	2	5	0	4	10	0
£75 „ „ £100	0	10	0	3	0	0	6	0	0
£100									
For every full sum of £50, and any fractional part of £50 thereof	0	5	0	1	10	0	3	0	0

- (4.) Of any other kind whatsoever not herein-
before described.. .. 0 10 0
(And see ss. 75-78 of Stamp Act, 1891).

N.B.—A lease made pursuant to a duly stamped agreement is only chargeable with the duty of *sixpence* (s. 75 (2)).

A lease with an option of purchase is only chargeable as a lease (*Worthington v. Warrington*, 5 C.B. 635), unless the option extends to other than the demised property, when a deed stamp or agreement stamp as well is necessary (*Love-lock v. Frankland*, 16 L.T. Q.B. 182).

A lease containing a contract for sale of fixtures is liable to *ad val.* duty, lease duty and a deed or agreement stamp.

A lease of furnished premises at one rent is liable to *ad val.* duty on the amount of the rent, but if a rent for the furniture should be separately reserved *ad val.* lease duty is not charged on that rent, but if there is a covenant to pay it it is chargeable under the head of "*Bond, Covenant*," etc., and see further *Alpe's Law of Stamp Duties*, 5th ed., pp. 147-8.

The following provisions of the Stamp Act, 1891, are specially applicable to *leases*:—

S. 76 (1) Where the consideration or any part thereof for which the lease is granted, or to be granted, consists of produce or other goods, their value is to be the consideration chargeable with *ad val.* duty.

(2) When it is stipulated that the value of the produce or goods is to amount to, or not to exceed a given sum, or where the lessee is charged with or has the option of paying after any permanent rate of conversion, the value of the produce or goods is for the purpose of assessing the *ad val.* duty to be estimated at the given sum, or according to the permanent rate.

(3) A lease or tack, or agreement for a lease or tack, made either wholly or partially for any such consideration, if it contains a statement of the value thereof and is stamped in accordance with that statement is, so far as regards the subject matter of the statement, to be deemed duly stamped, unless and until it is otherwise shown that the statement is incorrect, and that the lease, or tack, or agreement is in fact not duly stamped.

77 (1) A lease or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent or increased rent in the nature of a penal rent thereby reserved, or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack, or agreement of or relating to the same subject matter.

(2) A lease made for any consideration in respect whereof it is chargeable with *ad val.* duty, and in further consideration, either of a covenant by the lessee to make or of his having previously made any substantial improvement of or addition to the property demised, or of any covenant relating to the matter of the lease, is not to be charged with any duty in respect of such further consideration.

(3) No lease for a life or lives, not exceeding three, or for a term of years, determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation, aggregate or sole, is to be charged with any higher duty than thirty-five shillings.

(5) An instrument whereby the rent reserved by any

other instrument chargeable with duty and duly stamped as a lease or tack is increased, is not to be charged with duty otherwise than as a lease or tack in consideration of the additional rent thereby made payable.

78 (1) The duty upon an instrument chargeable with duty as a lease or tack of—

- (a) Any dwelling house or part of a dwelling house for a definite term, not exceeding a year, at a rent net exceeding £10 per annum ; or
- (b) Any furnished dwelling house or apartments for any definite term less than a year—

and upon the duplicate or counterpart of any such instrument may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed.

(2) Every person who executes or prepares, or is employed in preparing, any such instrument (except letters or correspondence), which is not at or before the execution thereof duly stamped, shall incur a fine of five pounds.

Stamping Lease after Execution.

By s. 15 of the Stamp Act, 1891, a lease chargeable with *ad val.* duty, may be stamped within thirty days after first execution, or if first executed abroad, then within thirty days after it has been first received in the United Kingdom, unless the opinion of the Commissioners with respect to the amount of duty chargeable has been taken before the expiration of such period, when the instrument must be stamped within fourteen days after notice of the assessment (sub-s. 2 (a) (b)).

The obligation to stamp the lease is on the lessee, and the penalty for omitting to stamp according to the foregoing provisions is £10, and a further penalty equivalent to the stamp

duty, unless a reasonable excuse for the omission be furnished to the satisfaction of the Commissioners, or to any court, judge, arbitrator or referee before whom it is produced (sub-s. 2 (c) (d)).

The Commissioners may, however, if they think fit at any time (s. 15 Finance Act, 1895), after the first execution of any instrument, mitigate or remit any penalty payable on stamping (sub-s. 3 (b)).

The payment of any penalty payable on stamping is to be denoted on the instrument by a particular stamp (sub-s. 4).

CHAPTER II.

AGREEMENTS FOR LEASES AND SPECIFIC PERFORMANCE THEREOF.

Form and Effect of Agreement for a Lease.

By the Statute of Frauds an agreement for a lease, of whatever duration, must be in writing, though a deed under seal is not necessary, except in case of agreements by corporations. If the agreement is void for non-compliance with this requirement, but possession has been taken under it, the position of the occupier is, as already explained (see *ante*, p. 11), that of a tenant at will only, until by payment and acceptance of rent or some equivalent act, a yearly tenancy is *prima facie* created, subject to such stipulations in the agreement as are not inapplicable to a yearly tenancy (as to these see *ante*, p. 8). In this respect entry under a void agreement for a lease has very much the same effect as entry under a void lease (see *ante*, pp. 8-9).

If, however, the agreement is valid, and can be specifically enforced, the position of the tenant who has entered into possession pursuant thereto, is virtually the same as if the actual lease had been granted (see *ante*, pp. 13-16).

If he is in a position to enforce the agreement, or, in other words, to compel the landlord to grant a formal lease in accordance with the terms of the agreement, then he is a lessee in equity, even though "the actual parchment has not been signed and sealed" (see per Jessel, M.R., in *Walsh v. Lonsdale*, L. Rep. 21 Ch. Div. 9). It should not, however, be inferred from this that parties should rest content with an agreement for a lease instead of having the actual lease—no stamp duty is saved, and so long as the agreement is, so to speak, executory, the right to specific performance is liable to be forfeited. It is, therefore, preferable to have the terms of tenancy embodied in a formal lease as soon as possible. As the importance of an agreement for a lease is now chiefly dependent on the question whether specific performance of it can be enforced, we must notice a few of the chief points in connection with this subject.

Principles on which Specific Performance is granted.

The principles on which specific performance of agreements for leases will be granted are in the main the same as those which apply to contracts for the sale of landed estates.* Thus the written agreement, or memorandum thereof, which is equally allowable, must be

* See Wright's "Landed Estates," pp. 34-37, "Purchase and Sale of Land."

complete; it must contain the offer and acceptance of the parties, which must be unambiguous and clearly relating to the same matter, the statement of the consideration, and the signature by the party against whom it is to be enforced, or his agent.

Requisites of Agreement.

It may be convenient to state shortly that so far as relates to leases the written contract or memorandum of the agreement must, in order to satisfy the requirements of the Statute of Frauds, specify the parties, *i.e.*, lessor and lessee, or afford the means of identifying them; it must describe, at any rate generally, the property to be leased; it must state the time when the term is to begin, or the date from which the rent is to be payable, the length of the term, and the rent to be paid. Special covenants or stipulations agreed upon should be stated, but common and usual covenants, etc., need not be mentioned.

A defective agreement or memorandum may be corrected by a supplementary writing referring to it, but not by verbal alterations.

As to the signature, it is only necessary that it should be that of the party to be charged. It is immaterial in what part of the document it appears, provided it be so placed as to show that it was intended to relate, and does in fact relate, to every part of it. It may be

either written or printed, in ink or in pencil. The signature may be by a duly authorised agent, whose authority need not be in writing ; and an unauthorised signature may be subsequently ratified.

Agreement subject to formal contract : Effect of.—Where parties make an agreement by letters, stipulating at the same time for the preparation of a formal contract, the question may be whether the agreement is complete and enforceable without such formal contract. The rule seems to be that if an offer be accepted, subject to a provision as to a formal contract, the stipulation is part of the acceptance, and the formal contract must be drawn up in order to bind both parties ; but if the reference to a formal document is, so to speak, only an incidental provision in the contract, the agreement can be specifically enforced without such formal document. Again, an agreement by letter to take a lease, “such lease to be approved in the customary way by my solicitor,” is a complete and enforceable contract, the clause as to approval meaning only that the lease shall contain nothing that is irregular or unusual ; it does not justify a capricious refusal to approve the lease (see *Chipperfield v. Carter*, 72 L.T. 487).

Void agreement : effect of part performance.—If the agreement, though void for non-compliance with the Statute, has yet been partly

performed ; that is, if acts have been done on the strength of it, this “ part performance ” will cure the defect and allow of specific performance being decreed notwithstanding. Suppose, for instance, a verbal agreement for a lease, or an invalid written one, followed by possession being taken by the tenant and money expended on the property by him or by his sub-tenant on the faith of that contract—the landlord could not in face of this set up the defence of the Statute in an action by the tenant for specific performance. But the act of “ part performance ” relied on by the tenant must be unequivocally referable to the contract, and not merely one which is explicable without the necessity of proving any particular agreement. Thus, where possession has been obtained by the tenant under a verbal contract for a lease, any expenditure by him must be something more than is merely consistent with a yearly holding (see *Mundy v. Jolliffe*, 5 Ry. and Cr. 167 ; *Brennan v. Bolton*, 2 Dru. and War 349). Continuance of possession taken before a verbal agreement may, if clearly referable to the contract, amount to part performance (see *Hodson v. Heuland*, 1896, 2 Ch. 428).

Specific performance discretionary with Court.—Assuming a valid agreement for a lease so far as the Statute of Frauds is concerned, the decreeing of specific performance is neverthe-

less discretionary with the Court, which may either decree specific performance or give damages for the breach of the contract (as to this see *post*, p. 287), or damages in addition to specific performance.

Defences to action for specific performance.—The following are briefly the main grounds on which the Court would refuse to enforce an agreement for a lease:—

1.—The agreement may be too uncertain or indefinite—*e.g.*, an agreement to grant a lease “agreeably to our covenants,” there being a conflict as to what these covenants are (see *Jeffery v. Stephens*, 8 W.R., 427), or a contract to grant a lease subject to the expenditure of money by the intended lessee in improvements on the premises where no definite sum was named (see *Gardner v. Fooks*, 15 W.R. 388). But an agreement to take a lease which is to provide for the lessee doing “all repairs, painting, papering, decorating, etc.,” himself, is sufficiently certain to be capable of being specifically performed (see *Dear v. Verity*, 38 L.J. Ch. 297, 486). The uncertainty must be as to some material term, and not merely in minor details, where the essentials are sufficiently certain.

2.—The agreement may be *conditional*, in which case no specific performance can be granted until the condition is performed. Take, for instance, a “preliminary” building agree-

ment, which is not a complete contract, but only intended to bring the parties together. In *Silcock v. Wood* (50 Law Times Rep. 251), there was an agreement of this kind, which only specified certain building plots, the landlord agreeing to advance the intended tenant a certain proportion of the costs of building each house. The plans were not agreed at the time, and the agreement contained no particulars as to them. It was held that there could be no specific performance, as the document was necessarily conditional on the particulars being settled.

A condition may, however, be waived. But occupation and payment of rent for a long time is not in itself sufficient to show a waiver.

3.—*Want of title* on the part of the intended lessor would be a ground for resisting specific performance, whether the action be brought by or against him; but if the want of title extended only to part of the property proposed to be let, the landlord might be compelled to grant a lease of such portion as he could show a good title to, the tenant being of course allowed an abatement in the rent (see *Burrow v. Scammell*, Law Rep. 19 Ch. Div. 175).

4.—If to enforce the contract specifically would work a *hardship* on either party, the Court will not grant its assistance, but will leave the party aggrieved to his common law remedy in damages. In *London (City of) v.*

Nash (3 Atk. 512), the tenant, under an agreement for a lease, repaired instead of rebuilding certain houses, but at the same time expended a considerable sum on the property. The landlord was refused specific performance, on the ground of the hardship it would be to the tenant under the circumstances, and he was left to his remedy in damages. Perhaps the commonest instance of hardship would be an attempt to enforce an agreement where the granting of the lease would involve the intending lessor in a forfeiture.

5.—The Court will not decree specific performance where it would involve a *breach of trust* or a breach of a prior contract with a third person, or if it would oblige a person to do what he is legally unable to do. The commonest illustration of this is where trustees agree to grant a lease in excess of their powers. But if the agreement be to grant a term longer than it was competent for them to do, the trustees might be forced to grant a lease to the extent of their interest.

6.—General *insolvency* on the intended lessee's part.—In the event of his bankruptcy his trustee may elect to adopt or to disclaim the agreement, but if the former, he cannot obtain specific performance without personally entering into the lessee's covenants.

7.—*Misrepresentation and fraud*.—Misrepresentation of a material fact, whereby a person

has been induced to enter into a contract to grant or take a lease, will be a ground for refusing specific performance against the party deceived. But the latter can enforce specific performance against the person guilty of the misrepresentation, provided he has not, with full knowledge of all the facts, acquiesced in the fraud. The misrepresentation, which may take the form of concealment, must be of a material fact and not of a matter of *law*. It may be made without knowledge of its untruth. But the statement must have been made in order to induce the other party to make the agreement, and it must have been relied upon by him. Circumstances of suspicion, not amounting to actual fraud, will not be sufficient to defeat the right to specific performance.

8.—Another ground of defence is where an agreement has been entered into by the defendant by *mistake*, that is under a reasonable misapprehension as to its terms, or as to its effect on a material point as between himself and the plaintiff (Redman and Lyon, L. and T., 4th ed., p. 148). The mistake must be one of fact and not of law (see on the subject of mistake as a defence to an action for specific performance, Redman and Lyon, L. and T. pp. 148-49).

9.—An important defence to an action for specific performance is that the plaintiff has been guilty of *delay*. Delay must be unreasonable, unless the contract expressly

provides for "time being of the essence of the contract," when failure to comply strictly with such a condition disentitles the party in default to a decree. In contracts relating to certain descriptions of property, it seems a condition of this kind would be implied even if not expressed, *e.g.*, in an agreement to let a mine or works for commercial purposes. Again, if one party has been guilty of delay the other may call on him to carry out the agreement within a reasonable time, in which case any further delay would be a bar to specific performance, unless properly accounted for. Delay may, of course, be waived by some act by the other party, *e.g.*, acceptance of rent showing that with knowledge of all the circumstances he yet treated the agreement as still subsisting (*Hudson v. Bartram*, 3 Madd. 1440).

10.—If a *decree* of specific performance would be *ineffectual* it will not be granted. For instance, where the Court cannot enforce it, as in the case of a building or repairing agreement, though it seems a strictly defined building contract might be ordered to be specifically carried out. An agreement to grant a lease, the lessor undertaking to do certain repairs, can only be specifically enforced by separating the stipulation as to repairs from the rest of the contract; the execution of the lease may be granted while a breach of the agreement as to repairs must be made a matter of damages.

If the composite agreement cannot be so divided there can be no specific performance, unless the unenforceable part is not material.

Sometimes the intended lessee has committed acts which would, if the lease had been actually granted, amount to a forfeiture. In such a case to decree specific performance of an agreement for a lease would be useless, as the lessor would immediately determine the lease by re-entry. Thus, gross breaches of covenants to repair or insure, not to carry on trade, or to cultivate land in a proper manner, or breaches which could not be compensated by damages, are good ground for refusing specific performance.

II.—*Other grounds of defence.*—Another ground of defence would be that the object of the agreement was *illegal*.

Inadequacy of consideration is not a defence unless so gross as to amount to evidence of fraud.

The Court will not decree specific performance when something has, by the agreement, to be done by third persons, *e.g.*, surveyors—over whom the Court has no control.

Such are the general grounds upon which this particular form of remedy for breach of agreement for a lease will be refused. The importance of the subject here consists in the bearing which it has on the effect of a

contract to grant a lease. We have already stated (*ante*, p. 275) that if a party holding under an agreement of this kind is in a position to claim specific performance, or, in other words, to defeat any of the defences which we have pointed out, then he is in virtually the same position as if the lease had actually been granted. But it must be obvious that so long as the lease is not actually executed pursuant to the agreement, his position is one of some uncertainty, as he may at any time find himself unable to claim specific performance, in which case he will regret that he did not obtain the actual lease when he was able, and therefore it is most desirable that where parties have entered into an agreement for a formal lease it should be executed as soon as possible.

Execution of lease pursuant to decree for specific performance.—Before leaving this branch of our subject we would add a few observations on the execution of the lease. It is not absolutely necessary that this should be done by the lessor himself. If he refuses to execute it pursuant to a decree for specific performance, the Court has power to nominate a person to execute it, whose execution will have the same effect as if it had been that of the actual lessor. At the same time a recalcitrant lessor might be attached for contempt of court in refusing to obey the decree (see Judicature Act, 1884, s. 14

and *Grace v. Baynton*, 25 W.R. 506, and Rules of Supreme Court, 1883, Order 42, r. 7).

When a lease is tendered for execution it is important to see that it corresponds with the agreement; as, once the lease is executed, this agreement is no longer in force, it is merged in the lease and cannot be referred to, to modify or control the deed.

Agreement for lease to contain "usual covenants."
—It is very common for the agreement to provide that the lease shall contain certain covenants. If these are not specified only "usual" covenants can be inserted in the lease. These are, on the lessor's part, a covenant for quiet enjoyment; on the lessee's part, covenants to pay rent, with a proviso for re-entry on non-payment; to pay tenant's taxes, to keep and yield up the demised premises in repair, and for that purpose to allow the lessor to enter and view the state of repair. Possibly, also, where the rent payable is to be a "net" rent, a covenant to pay landlord's taxes other than property-tax and tithe-rent charge would be considered a "usual" covenant.

But it would not be a usual covenant to repair if there were inserted in it an exception in case of destruction by fire (*Sharp v. Milligan*, 23 Beav. 419). Covenants which would not be generally considered "usual" may be so in some cases, *e.g.*, by local custom or by reason

of special circumstances connected with the nature of the property.

The common covenants against assigning or underletting (whether with or without license), and in restraint of trade generally, or some particular trades, are not "usual" covenant in the sense now intended; nor is a proviso for re-entry by the landlord on breach of covenant other than for rent, or on the lessee's bankruptcy a "usual" clause.*

Damages for breach of agreement for a lease.—We have already seen (*ante*, p. 279) that damages may be awarded in an action for specific performance; but where specific performance cannot be granted damages will be the only remedy for breach of an agreement to grant or take a lease. In such an action the damages will be the loss sustained through the neglect or default of the other party. An action for damages may be brought where the proposed lessor cannot give a good title, it being an implied term in an agreement for a lease that the proposed lessor has a good title to let; and the plaintiff may recover any premium or deposit paid by him—even though he has taken possession of and occupied the premises under the agreement—together with interest and expenses, but not damages for loss of bargain. If, however, the intended lessor entered into

* See further as to what are "usual" covenants, *ante*, pp. 139-140, note.

the agreement with full knowledge that he had no title nor the means of acquiring it, such damages may be recovered on the ground of fraud, which must be specially alleged and proved.

Money expended by the proposed lessee on the premises with the consent of the lessor may, if the proposed lessee was prevented by the lessor's default from getting possession, be recovered.

After the lease has been executed the lessee cannot recover damages for a defect of title which he might have discovered before he took the lease, unless there is an express agreement as to compensation in such a case (see *Clayton v. Leach*, 41 Ch. D. 103).

In an action against a proposed lessee for not taking a lease it is no defence to allege that the lessor agreed to do certain things not specified in the contract, unless such agreement was as to collateral matters, or amounted to a condition precedent, or to a warranty, or was a fraudulent representation on the part of the proposed lessor.

CHAPTER III.

YEARLY AND OTHER TENANCIES.

(i.) *Yearly Tenancies.*

A yearly tenancy, or tenancy from year to year as it is also called, is a tenancy for a term which will continue indefinitely until put an end to either by the landlord or tenant at the end of the first or any subsequent year thereof by a proper notice to quit. If no notice should ever be given the tenancy would, it seems, continue until surrendered or extinguished by the Statute of Limitations or the lessor's title ceases.

It is not terminated by the death of the tenant nor by that of the landlord, even when the latter had himself only a life interest in the property demised, provided, at least, that the tenancy was properly created under a statutory or other power enabling a life tenant to grant such a lease.

A yearly tenancy may be created either by express contract, or, as is very frequently the case, may arise by implication of law from the

occupation of premises under certain circumstances (see *ante*, pp. 7-16).

In creating a yearly tenancy, which may be done verbally, the parties should be careful not to use words which may extend the tenancy—thus to demise “for one year and so on from year to year” creates in the first instance a tenancy for two years, which cannot be determined before the end of the second year, though it may be determined then or at the end of any subsequent year by a proper notice to quit. As to what is a proper notice to quit, see *post*, Chap. XI.

There is a clear distinction between a tenancy “from year to year” and one “for a year.” The latter being for a definite term comes to an end *ipso facto* at the end of the year and requires no previous notice to determine it.

Implied yearly tenancy.—As already stated, a yearly tenancy arises not only from express contract, but also, under certain circumstances, by implication of law. Thus, a person occupying under a *void lease*, or under an agreement for a lease, may become, as will presently be explained, a yearly tenant on such of the terms of that lease as are not inapplicable to a yearly tenancy (as to these see *ante*, p. 8).

This would be, *e.g.*, where the void lease

cannot be construed as an agreement, or, if so construable, the agreement is not specifically enforceable, or if an express agreement for a lease is either void or not specifically enforceable.

But although a yearly tenancy may be created under the above circumstances, the tenant in possession is, in the first instance, no more than a tenant at will (as to this see *post*, p. 296) ; on his paying or agreeing to pay the rent reserved by the lease, this tenancy at will changes into what is *prima facie* a yearly tenancy. We say *prima facie* advisedly, because the payment of rent is not in itself conclusive to show a yearly tenancy, but is rather evidence from which a jury may find the fact of a yearly tenancy.

This would be so where, as is most commonly the case, the tenant pays the rent without anything more, but he is not precluded from explaining the circumstances under which he made the payment, so as to rebut the implication which would otherwise arise.

A similar result appears to follow where a tenant for a definite term continues in possession, or "holds over," after the expiration of his tenancy. That is to say, he is in the first instance a tenant on sufferance (see as to this *post*, p. 303) ; but on paying or agreeing to pay rent at the old rate, a presumption arises of a

yearly tenancy on such of the terms of the expired lease as are not inconsistent with a yearly tenancy (as to these see *ante*, p. 8).

But whether there is anything to displace such presumption is a question of *fact*, and either landlord or tenant may adduce evidence to show under what circumstances the rent was accepted or paid, as the case may be. But in the absence of any rebutting evidence the presumption of a yearly tenancy will stand.

The case of *Dougal v. M'Carthy* (1893, 1 Q.B. 736) seems to go further than previous authorities, and to suggest that mere continuance of the tenant in possession with the consent of the landlord will, without more, create a yearly tenancy. The facts in that case were, however, relied upon as showing that the parties consented to a continuance of the tenancy after the expiration of the lease, the implication being that in the absence of rebutting evidence there was a tenancy from year to year on the terms of the expired lease, so far as consistent with such tenancy.

The presumption of a yearly tenancy on the terms of the expired lease is not displaced by the fact that the reversion has been previously assigned, and an increase in the rent* will not

* An agreement made during a tenancy for an increase or reduction of rent has not of itself the effect of creating a new tenancy.

prevent the other covenants in the expired lease from applying, in the absence of any contrary stipulation. So a similar proviso for re-entry will be implied, and any custom that was not contrary to the express provisions of the expired lease.

These implied yearly tenancies are determinable by notice at the end of the first or any subsequent year, reckoned from the time of year when the original tenancy commenced.

Presumption of yearly tenancies in other cases.—A yearly tenancy will also be implied in the now comparatively rare case where a lease granted by a life tenant having become void by his death, rent is paid to and accepted by the remainderman.

So, where a mortgagor after the mortgage grants a lease, not authorised either by statute or by the mortgage deed ; though such lease is not binding on the mortgagee, yet if the tenant attorns and pays rent to the latter, he becomes at most a yearly tenant, on such of the terms in the lease as are consistent with a yearly tenancy.

Leases by yearly tenants.—A yearly tenant may grant an underlease from year to year, and has a sufficient reversion to entitle him to distrain for the rent reserved. He may even, it is said, lease for a term of years, which will be good so long as the first tenancy continues.

Statutes of Limitations.—A yearly tenant

under a verbal lease who pays no rent for twelve years, and gives no written acknowledgment of his landlord's title, will then be entitled to hold the property as his fee-simple. The period of twelve years is calculated from the end of the first year of the tenancy, or from the last time when rent was received, whichever shall last happen (see Real Property Limitation Act, 1833, s. 8; Real Property Limitation Act, 1874, s. 2).

(ii.) *Tenancies for less than a Year.*

Tenancies for less than a year are usually either quarterly, monthly or weekly.

They may be created verbally, and either expressly or impliedly. Thus an indefinite letting may be construed to create a quarterly, monthly, weekly, or other periodic tenancy, either by virtue of local custom or of some terms of the letting which show an intention to create the particular holding. The mode of payment of rent will commonly indicate the period of the tenancy intended. Thus a letting at, *e.g.*, a "quarterly" rent will, in the absence of rebutting evidence, create a quarterly tenancy. Or again the notice to be given on either side may show the kind of tenancy. As, if the tenant is to be entitled or bound at any time to quit or give up possession, on giving or receiving, *e.g.*, a quarter's notice, he is a quarterly tenant.

But a letting at a yearly rent payable, *c.g.*, weekly, creates a yearly tenancy determinable by the notice requisite in case of a yearly tenancy, though a shorter notice to terminate may be agreed upon by the parties. See the case of *Rex v. Herstmonceaux* (7 B. and C. 551), where a house was hired at twenty guineas a year, the rent to be paid weekly, and either landlord or tenant to be at liberty to determine the tenancy at three months' notice from any quarter day. It was held that this was a yearly tenancy though liable to be terminated by a three months' notice.

In many cases, it will, of course, depend on the construction to be placed upon the language, as a whole, of the lease whether the tenancy will be a yearly or other periodic one.

Where houses are let by the month, this *prima facie* means a lunar month.

As to the notice necessary to terminate a quarterly, monthly or weekly tenancy, see *post*, Chap. XI., "*Notice to Quit*."

Lodgings.—Questions with regard to these short tenancies very commonly occur in the case of lodgings, which, subject to certain exceptions, stand in the same category as other demised premises. A tenant of lodgings is a tenant in the ordinary sense of the term, provided he has exclusive occupation of his rooms.

As to notice to quit lodgings, see *post*, Chap. XI., "*Notice to Quit*." *

(iii.) *Tenancies at Will and on Sufferance.*

(a) *Tenancy at will.* *What it is.*—A tenancy at will exists where property is held merely at the will of the lessor. The tenant has an entirely precarious and uncertain interest, which may be terminated at any time by the landlord without previous notice. A demand of possession or other intimation by the landlord that the tenancy is at an end is sufficient. Thus a lease of the same premises to a third person would be equivalent to

* *Note as to lodgings and lodgers.*—The following points as to lodgings and lodgers may be conveniently stated in this place, though most of them will be found referred to under various headings. A contract to let lodgings is a contract for an interest in land, and no action can be brought upon it unless it is in writing; but if, as is usual, possession be taken under a verbal agreement the agreed rent can be recovered and the other terms enforced. There is no privity between a lodger and the superior landlord and, therefore, if the latter should eject the lodger's immediate landlord such ejectment would involve that of the lodger. As to the lodger's position with regard to the superior landlord's right of distress, see *post*, Chap. VI., "*Distress for Rent*."

Letting lodgings is a breach of a covenant not to sub-let the premises or any part thereof (see *ante*, p. 215), and it would probably be held to be a breach of a covenant, as commonly worded, not to carry on any business on the demised premises (see *ante*, p. 233).

Larceny of fixtures, etc., by lodgers is specially punishable by s. 74 of the Larceny Act, 1861. A person who lets lodgings is not, in the absence of gross negligence, responsible to his lodger for theft of the latter's goods from such lodgings.

On letting furnished lodgings there is an implied condition that they are then in all respects reasonably fit for habitation, and on the contrary proving to be the case, *e.g.*, on

terminating the tenancy at will. On the other hand, the tenant may also give up his holding whenever he chooses.

Although the duration of a tenancy at will is thus uncertain, yet there is nothing to prevent a fixed rent being reserved so long as it lasts, and such rent may be distrained for.

An action for use and occupation (see *post*, Chap. V.) will lie in respect of the occupation of premises under a tenancy at will.

How the tenancy is constituted.—A tenancy at will may be expressly or impliedly created.

It is expressly created where (*e.g.*) a man lets property indefinitely, or allows another to occupy it without any term being fixed.

account of bad drainage, vermin, etc., the tenant would be entitled to quit without notice, and would be relieved from further responsibility for rent (see *ante*, pp. 119 *et seq.*). In case of lodgings, whether furnished or not, let to working-class tenants it is an implied term—in the absence of express stipulations to the contrary—that they are then fit for habitation, and if the contrary be proved, the lodger would be entitled to quit without paying rent, and also to damages for any injury received (see Housing of the Working Classes Act, 1890, s. 75: *Walker v. Hobbs*, 23 Q.B.D. 458, and *ante*, pp. 124-5).

Letting lodgings which have been occupied by a person suffering from a dangerous infectious disorder without informing the new lodger of the fact, or ceasing to occupy infected lodgings without having them disinfected, or trying to let and conceal the fact of infection, are all punishable offences under the Public Health Acts.

An action for use and occupation of lodgings, whether furnished or unfurnished, will lie. A lodger has the right to use of the door bell, knocker, skylight of the staircase and water closet, in the absence of any agreement to the contrary at the time of letting. If lodgings be let knowingly to prostitutes for immoral purposes no rent can be recovered.

But if an annual rent be reserved the tenancy would probably be held to be a yearly one.

If the letting be expressly to hold at the will of the lessor, or so long as both parties please, the mere fact that the tenant has occupied for a considerable period, and even expended money on the property, will not enlarge his interest.

Implied tenancy at will.—A tenancy at will often arises impliedly. For instance, a person holding over, *i.e.*, continuing in possession after the end of his tenancy, pending a new lease being granted, is only a tenant at will. If, however, a tenant merely remain in possession after the end of his tenancy, without any assent or dissent, he is, in the first instance, at any rate, merely a tenant on sufferance (see *post*, p. 303), though he may, on payment of rent, etc., become a yearly tenant.

So possession under a void lease creates a tenancy at will, subject so far as may be to the terms of that lease, except as to the duration of the tenancy, and, as we have already shown (*ante*, p. 291), convertible on payment, etc., of the rent thereby reserved into a yearly tenancy on such terms of the void lease as are consistent with a yearly tenancy.

Possession of property given pending negotiations for purchase creates a tenancy at will if the purchase goes off (see further as to this, *post*, p. 302).

How tenancy may be determined.—The commonest way of determining a tenancy at will is by the lessor demanding possession, or the tenant expressly giving it up. But either party may put an end to it by declaring his intention to that effect, or doing some act inconsistent with the continuance of the tenancy. Such acts on the part of the lessor would be going on to the property without the tenant's consent, and exercising acts of ownership, assigning his reversion, whether absolutely or by way of mortgage (see *Jarman v. Hale*, 1899, 1 Q.B. 994), with notice thereof to the tenant; granting a lease to a third party to commence immediately—contracting to sell the premises to the tenant.

In *Jarman v. Hale* (*supra*), it was held that after the mortgage a new tenancy at will might be created between the parties, so as to cause the Statute of Limitations (3 and 4 Will. IV.) to begin to run (see further as to this, *post*, p. 301).

So, if the tenant should purport to assign or underlet the property,* or commit waste, it would be in law a determination of the tenancy. And so apparently the bankruptcy

* A tenant at will, or on sufferance, can create the relation of landlord and lodger between himself and a person occupying part of the premises, at any rate so as to give the lodger the benefit of the Lodgers' Goods Protection Act, 1871 (as to this, see *post*, Chap. VI., "Distress for Rent"), *Bensing v. Ramsay* (62 J.P. 613).

of the tenant would have a similar effect. The death of either party would determine the tenancy.

When notice to determine tenancy necessary.—If demand of possession by the landlord be made on the premises no previous notice is necessary ; but the doing *off* the premises of any act amounting in law to a determination of the tenancy at will, is not operative until communicated to the tenant.

So, although a tenant by assigning or underletting impliedly determines the tenancy, the landlord cannot be prejudiced without notice thereof.

Demand of possession by the landlord may be *constructive*—as by threatening to take possession unless money be paid, and on non-payment the landlord would be entitled to bring ejectment without further notice or demand.

Effect of determining the tenancy.—Although a tenancy at will may, as already explained, be summarily determined, the tenant will, nevertheless, be entitled to such further possession as may be necessary, *e.g.*, to enable him to remove his property ; or, if he has sown crops before the tenancy was determined, he will be allowed afterwards to cut and carry them when ripe. On the other hand, the landlord must not be injured by the tenant suddenly putting an end to the tenancy.

A good illustration of the mutual operation of this rule is afforded by the case of a tenancy at will, with rent paid quarterly or half-yearly. If the landlord determines the tenancy after a quarter or half year has commenced he loses the rent for such quarter or half year ; and, on the other hand, if the tenant determines it after a quarter or half year has commenced, he must pay the rent for that quarter or half year.

Statute of Limitations.—Under the Real Property Limitation Acts, 1833-1874, a tenant at will may, after being in possession for thirteen years without paying any rent or giving any acknowledgment of his landlord's title, acquire the fee simple of the land he has occupied.

According to the strict wording of s. 7 of the Act of 1833, payment of rent during this period would not prevent the tenant at will from acquiring a title after the thirteen years, but in view of the decisions that have been pronounced it is probable that each payment of rent would be held to operate as an acknowledgment of title so as to prevent the statute from running in favour of the tenant. Or the payment of rent may convert the tenancy at will into one from year to year, or for some other period, in which case the Statute would only begin to run against the landlord from the last payment of rent.

We have mentioned that where possession of

property is taken pending negotiation for a purchase which goes off, the intended purchaser is a tenant at will (see *ante*, p. 298).

So it has been held that occupation under an agreement for purchase constitutes the occupier a tenant at will. But it would seem that in equity he is the owner of the property, and, therefore, his possession is not that of a tenant at will within the meaning of the Statute of Limitations. The same principle seems to have been directly laid down in a recent case, where persons were let into possession under an agreement for a building lease for ninety-nine years. The lease was never granted, but the intended lessees and their successors in title continued in possession during the ninety-nine years, under such circumstances that they could have demanded the execution of the lease. It was held that the occupiers were not tenants at will but actually lessees in equity (see *Walsh v. Lonsdale, sup.*), and, therefore, that the Statute of Limitations did not, during the term, begin to run against the reversioners (*Warren v. Murray*, 1894, 2 Q.B. 648).

Where a person is in possession of premises as tenant at will without payment of rent, the fact that the landlord enters the premises, without objection on his part, to do repairs does not amount to a determination of the will, so as to prevent the tenant acquiring a title under the

Statute of Limitations (*Lynes v. Snaith*, 1899, 1 Q.B. 486).

(b) *Tenancy on sufferance*.—A tenancy on sufferance is created when a person who has lawfully entered into possession of property—*e.g.*, under a lease—wrongfully continues therein after his lawful term of possession has expired. Thus, if a tenant under a lease for a term of years, or his under-tenant, remain in possession after the lease has come to an end, he, or his under-tenant, as the case may be, is a tenant on sufferance merely. So a tenant at will may become a tenant on sufferance by remaining in possession after the tenancy at will has been put an end to; but such tenancy on sufferance may, on slight evidence, be converted into a fresh tenancy at will, or by payment of rent, etc., into a yearly tenancy.

A tenant on sufferance may be ejected without any demand of possession, though he may in such a case have an action of trespass or assault.

So an action of ejectment may be commenced without any previous demand, whereas, in the case of a tenancy at will, it seems that there must be a demand first, though the writ may immediately follow.

A tenant on sufferance cannot create an under-tenancy, except as against himself, and

then only by estoppel. See the recent case of *Bensing v. Ramsay*, cited *ante*, p. 299, note.

A person cannot make himself a tenant, either at will or on sufferance, by obtaining possession of property, though with the intention of treating for a lease; and even if in such case negotiations afterwards take place with that object, he seems to be at most only a *quasi* tenant on sufferance.

CHAPTER IV.

SPECIAL KINDS OF TENANCIES.

(a) *Tenancy as between an intended vendor and purchaser of land.*—It often happens that pending the completion of a contract for the sale of land the intended purchaser is let into possession. In such a case a tenancy at will may arise. If the intended purchaser should remain in possession after the time fixed for completion, or after the contract goes off, it seems he is a tenant at will; and where he has forfeited his rights under the contract by making some default, and still continues in possession, he would appear to be a tenant on sufferance. An intending purchaser in possession under a subsisting contract cannot merely as such tenant at will be sued for the use and occupation of the premises, though proved to have been beneficial, but if he admits himself to be a tenant meanwhile at a certain rent, he can be distrained, or possibly sued for use and occupation.* And where an intended purchaser

* It is doubtful whether, in view of the recent ruling in *Horsey Estate v. Stieger* (1899, 2 Q.B. 79), a purchaser let into possession under a contract of purchase becomes a tenant at will. In that case it was held that where the purchasers of a lease were given possession pending completion, there was

is merely a tenant on sufferance, *e.g.*, where he continues to hold after the contract is off, he may be sued for subsequent use and occupation.

On the other hand, if the vendor remains in possession of the property sold after the completion of the purchase, he does not, it seems, in the absence of express agreement, become a tenant, or liable for use and occupation.

But a condition of sale providing that the purchaser should be entitled to the rents and profits as from the date fixed for completion, would make the vendor liable to pay a fair occupation rent for so long thereafter as he continued in possession (see *Metropolitan Railway Company v. Defries* (1877), L.R. 2 Q.B.D. 189, 387), although neither party was responsible for the delay in the completion.

(b) *Tenancy as between mortgagor and mortgagee.*—It has always been a moot point whether the relation of mortgagee and mortgagor is that of landlord and tenant. If so, the tenancy of the mortgagor would appear to be of the most precarious nature, perhaps that of a tenant on sufferance. He could at any time be deprived of possession by the mortgagee,

no under-letting to them within the meaning of a covenant against assigning or under-letting, though it was suggested that what had taken place might have been a breach of a covenant against parting with possession (see per Lord Russell, L.C.J., at p. 93).

and had no demisable interest. At any rate, his tenant could be treated as a trespasser by the mortgagee, though there would be a valid tenancy by estoppel as between the tenant and the mortgagor.*

Attornment clauses.—The question of tenancy or no tenancy, as between mortgagor and mortgagee, is of practical importance for this reason, that if the interest on the mortgage could be regarded as rent the mortgagee could distrain for it, a remedy much more valuable to him than the right to recover on a judgment, when he might be met by adverse claims; whereas with a right to distrain he would be a preferential creditor.

Therefore, in order to create a definite tenancy, many mortgage deeds contain what is called an "attornment clause," by which the mortgagor attorns, or acknowledges himself to be, tenant to the mortgagee at a rent equivalent to the interest reserved by the mortgage, with a proviso that if the interest should be in

* The interest of the mortgagor is, however, now so far recognised that by virtue of the Conveyancing Acts he can, while in possession, grant leases of a certain duration which will be binding on the mortgagee (see *ante*, p. 32). And even in case of a lease not authorised by these Acts, a mortgagor while entitled to possession, unless the mortgagee has given notice of his intention to take possession, can in his own name sue to recover possession or rent from any of his tenants (Judicature Act, 1873, s. 25, sub-s. (5)). See, too, the provisions of the Tenant's Compensation Act, 1890, protecting from eviction by the mortgagee tenants of agricultural lands and allotments under leases by the mortgagor not otherwise binding upon the mortgagee, *post*, Chap. XIII.

arrear the mortgagee shall be at liberty to distrain for the rent reserved.

Many cases have been decided as to the nature and effect of tenancies created by attornment clauses in mortgage deeds, but they are of less importance than formerly, inasmuch as the power of distress, for which they were chiefly valued, is now no longer available by reason of the Bills of Sale Acts, which have declared such attornment clauses to be bills of sale. For the construction of such clauses, reference may be made to the cases collected in Woodfall, L. and T., 16th ed., pp. 247-249.

Attornment clauses as bills of sale.—Section 6 of the Bills of Sale Act, 1878, declares that every attornment, not being a mining lease, whereby a power of distress is given by way of security for any present or future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise, for the purpose of such security only, shall be deemed to be a bill of sale within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Being considered a bill of sale it would require registration, and by s. 8 of the Act of 1882, if unregistered, would be void in respect of the personal chattels comprised in it.

Whether it would also be void altogether

under s. 9 of the same Act as not being in accordance with the statutory form of a bill of sale, given by way of security, is not quite clear. The decision of the Court of Appeal in *Green v. Marsh* ((1892), 2 Q.B. 330) suggests that the attornment clause, though void under s. 8, is not so under s. 9, and, therefore, might be good for other purposes; but the reasoning, which is very technical, has been disapproved (see Weir on Bills of Sale, pp. 182, 247), and the point can scarcely be said to have been definitely decided.

It is to be observed that (1) mining leases are expressly excepted from the operation of s. 6 of the Act of 1878, while (2) a demise by a mortgagee, who has taken possession, to his mortgagor at a fair and reasonable rent is also excepted (see proviso to s. 6).

As to (1), it has been held in the case of *In re Roundwood Colliery Company* ((1897), 1 Ch. 373) that a mining lease containing a power for the lessor to distrain for the mining rent, not only upon chattels belonging to the lessees on the demised colliery, but also on any adjoining or neighbouring colliery connected with it by underground workings, is within this exception, it being a common power in mining leases. It was also held that such a power was a power of distress for a real rent, and not one by way of security for a debt within this section or otherwise, so as to require registration

of the lease. As to (2), it was held in *ex pte. Kennedy, in re Willis* (21 Q.B.D. 384) that the proviso to s. 6 only applies to cases where the mortgagee, having taken possession of the mortgaged premises, has afterwards demised them to the mortgagor, and not to a case where the demise is created by an attornment clause in the mortgage deed.

When attornment clauses valid.—Although the effect of these sections and the decisions upon them is to destroy the validity of attornment clauses in mortgage deeds, so far as they are given by way of security for a present or future debt; yet they may operate by way of demise as between the mortgagor and mortgagee, and, except as to the power of distress, can be used for other purposes of a tenancy, *e.g.*, the mortgagee can recover possession of the premises by the summary procedure in ejectment available for landlords against their tenants (see *Mumford v. Collier*, 25 Q.B.D. 279; *Daubuz v. Lavington*, 13 Q.B.D. 347).

Tenancies created by mortgage deeds.—Apart from any attornment clause a mortgage deed may be so worded as to create a tenancy for a fixed period in the mortgagor, *e.g.*, where it provides for the mortgagor enjoying possession until default, with a covenant by the mortgagee not to call in the mortgage debt for a term of years so long as the interest be regularly paid. This creates a lease for such term determinable

on non-payment of the interest by the mortgagor.

(c) *Tenancy as between master and servant.*—Occupation of premises by a servant for the purposes of or to enable him the better to carry out his duties, or in part remuneration for his services, does not as between him and his master create any tenancy.

He appears to be, in such cases, at most a licensee, and to require strictly speaking no notice to terminate his occupation, though his master would probably not be entitled to turn him out without some notice. As even a licensee is entitled to reasonable notice before his license can be revoked, and if he suffered any injury through the license being unreasonably withdrawn, he would be entitled to an action for damages.

But a servant may, by defending an action of ejectment, make himself personally liable as tenant in possession.

For other purposes a servant occupying premises may be deemed a householder or tenant, *e.g.*, for the purpose of beginning a voting qualification (see Representation of People Act, 1884, s. 3).

A holding which is let to a tenant during his continuance in any office, appointment, or employment held under the landlord, is not within the provisions of the Agricultural Holdings Act, 1883 (see s. 54 and *post*, Chap. XIII.).

CHAPTER V.

COMPENSATION FOR THE USE AND OCCUPATION OF LAND.

Informal Tenancies.

We have already referred to the circumstances under which persons may be liable to an action for the use and occupation of land, of which they are in possession under circumstances raising a tenancy (see, in case of a tenancy at will, *ante*, p. 297 ; and in case of a tenancy as between an intending vendor and purchaser, *ante*, pp. 305-6). There are other cases where a person is in occupation of premises without any formal or definite agreement as to the terms upon which he is to occupy, but under such circumstances that it cannot be supposed that he is to have the use of the premises gratis.

Here, too, the landlord will be entitled to compensation for the loss, which in the absence of compensation, he would be said to sustain through such occupation.

The law implies on the part of the occupier a promise to pay the landlord a reasonable sum for such use and occupation. What the landlord will recover is not strictly rent but a *quid pro quo* for the permission to occupy the premises. It will be thought that there is not

much difference between the two things; but there is one very practical and substantial distinction, viz., that this compensation cannot be distrained for; it can only be recovered in an action.

What must be proved in an action for use and occupation.—The occupation must have been by permission of the landlord. It is not sufficient for the latter to prove that he is the landlord, he must show also that the occupier held by his permission either express or implied. If the occupier held as a tenant from some other person from whom he obtained possession, or as a mere wrongdoer or trespasser, he cannot be sued for use and occupation.

It is essential that there should have been actual or constructive occupation of the premises, and, therefore, a lessee or assignee of a lease, who has not actually entered into possession, cannot be sued in an action for use and occupation. But as entry by one of several joint lessees or assignees is in law the entry of all, entry by one would be sufficient to render the others liable.

Constructive occupation.—The Statute 11 Geo. II., c. 19, s. 14, gives the landlord a right to sue for this compensation where the premises have been either “held or occupied, or enjoyed.” The effect of this is that, if a lessee who has once entered upon possession should afterwards sub-let, and therefore cease

to occupy personally, he would still "hold" the premises until the determination of his term, and a constructive holding or occupation as tenant would be sufficient after entry without further actual occupation or enjoyment.

The following have been held to be instances of constructive holding or occupation. Where a yearly tenant assigned his interest but the landlord declined to accept the assignee as his tenant—a by no means uncommon case—the tenant would be liable for use and occupation (*Shine v. Dillon*, 1 Ir. Com. L. Rep. 277).

A lessee who sub-lets constructively occupies by his sub-tenant and is liable in this kind of action. But the sub-tenant is not liable to the superior landlord, unless he has been accepted by him as tenant with the consent of the lessee. If this happens the effect would be to relieve the lessee of all liability to an action for use and occupation, unless the superior landlord merely consents to accept the sub-tenant without releasing the lessee, in which case it seems the liability of the latter would continue.

The same result would appear to follow if any new tenant were accepted by the landlord in place, and with the consent, of the lessee.

In case of tenant "holding over."—If a tenant continues in actual or constructive occupation of premises after his tenancy has terminated—or to use the technical term, "holds over"—he may become liable in an

action for use or occupation if there be anything to show an intention on the part of the landlord to treat his holding over as a new or continuing tenancy. But the mere holding over is not conclusive, as he may hold over in such a way as to be simply a trespasser; and it will always be a question of fact whether by acquiescing in it the landlord intended to recognise any new kind of tenancy (see per Lord Denman in *Jones v. Shears*, 4 A. and E. 832).

It follows from this principle of constructive occupation that if a sub-tenant holds over, the sub-lessor will be liable for use and occupation so long as the sub-tenant holds over.

Or if one of two joint lessees holds over with the assent of the other both are liable for use and occupation, so long as such "holding over" continues.

Where there is an actual demise.—From what has been already stated it might be inferred that this form of action could not be maintained where there is an actual demise; and by the common law this was so. But by virtue of the Statute 11 Geo. II., c. 19, s. 14, unless the demise is by *deed*, the landlord can recover for use and occupation, notwithstanding that it turns out that there is an agreement or lease at a certain rent. Where this is proved, the lease or agreement may be used as evidence of the quantum of damages recoverable in the action.

If, however, the demise be by *deed* there can be no action except on the deed, unless the deed was delivered only as an escrow (see *ante*, p. 257) ; but an agreement by deed for a lease, if not amounting to an actual demise, either at law or in equity, will still permit of an action for use and occupation.

The right to compensation accrues from day to day so long as the occupation lasts and stops with the occupation.

It may be recovered in respect of the use of property whether corporeal, such as lands or houses, or incorporeal—*e.g.*, tolls; or tithes; or easements, such as water rights; or profits, such as fishing, sporting, or mineral rights.

Persons who may sue and be sued for use and occupation.—The action may be brought by a landlord against any kind of tenant—*e.g.*, a tenant at will or on sufferance, but not by a mortgagee against a mortgagor remaining in possession of mortgaged premises by sufferance of the mortgagee.

It may be brought by a lessee who has sub-let to a tenant at a rent for the whole of his own term, where such a sub-letting operates in law as an assignment (see *ante*, p. 2). Although the sub-tenant could not be distrained in such a case for the agreed rent, he might be sued for it as compensation for the use and occupation of the premises (*Pollock v. Stacey*, 9 Q.B. 1033; *Beardman v. Wilson*, L.R. 4 C.P. 57).

A landlord who has mortgaged his interest whether before or after an occupation has been commenced, can nevertheless sue the occupier for use and occupation, unless in the latter case the mortgagee has compelled the tenant to pay the compensation to him.

A corporation which has no power to let by parol demise can nevertheless recover for use and occupation against a tenant who has entered into possession under such a letting (*Ecclesiastical Commissioners v. Merral*, L.R. 4, Ex. 162).

Persons who are not legal owners of property, but are in equity the real landlords, the legal estate being in trustees, may nevertheless now sue for use and occupation, though more usually the trustees would be the parties to take action.

Auctioneers may sue for use and occupation of premises let by them, though on behalf of a principal, if the letting was by them personally, and in such a way as to make themselves personally responsible as letters, but otherwise this is not so, and the owners should sue in their own names (see the case of *Fisher v. Marsh*, 6 B. and S. 411; *Evans v. Evans*, 3 A. and E. 132).

Occupation must be by permission of the landlord.

—It is essential that the occupation of the premises should have been by the permission, whether express or implied, of the landlord; and therefore a lessee who has continued to

occupy notwithstanding a pending action for ejectment against him, cannot be sued for use and occupation subsequent to the date of the issue and service of the writ. Rent accrued due before the day of the writ may, however, be recovered in this form of action. The compensation for the subsequent occupation must be sued for as *mesne profits*, or else for double value under 4 Geo. II., c. 28.

So an evicted tenant, *i.e.*, one who has been turned out of possession by his landlord, is not liable for use and occupation, at any rate, if he has been evicted with the object of putting an end to his tenancy.

In the case of *Henderson v. Mears* (1 F. and F. 636), where an objectionable person left in possession of furnished apartments by the tenant was turned out by the landlord, it was held to be a question of fact whether such eviction was for the purpose of depriving the tenant of possession, or merely of ridding the place of a nuisance.

Position of executors.—The position of executors or administrators of a deceased tenant is one of some peculiarity, and whether they are personally liable in an action for use and occupation depends upon whether they have entered into possession of the premises as assignees, in which case they would be personally liable for the subsequent use and occupation. As executors or administrators

they would be liable as on an implied contract made between their testator, or intestate, and the landlord.

But if they can show that they took possession merely as executors, and that they have no assets, and that the yearly value of the land is not equal to the rent, they cannot be made either personally responsible, or in their representative capacity, for the use and occupation to an extent exceeding such value (see *Patten v. Reid*, 6 L.T. 281). Moreover, entry by one of several executors is not equivalent to entry by all, so as to put on them a joint personal responsibility, whereas in the case of joint assignees we have seen the entry of one would have made all liable (see *ante* p. 313).

Trustees in bankruptcy.—The trustee in bankruptcy of a tenant's estate may be liable for use and occupation of premises occupied by the tenant, and for which the tenant himself would have been liable in this form of action. The trustee can, however, by exercising his power to disclaim burdensome property, put an end to any obligation of this kind.

Corporations.—Corporations aggregate who have occupied property for corporate purpose by permission of the landlord may be sued for use and occupation (*Lowe v. L. and N.W. Railway Co.*, 18. Q.B. 632). But whether they can be made liable for the period of their actual occupation only, or also subsequently under any

implied contract of tenancy—*e.g.*, a yearly tenancy—is not altogether clear (see *Finlay v. Bristol and Exeter Railway Co.*, 7 Ex. 409; Pollock on Contracts, 6th ed., p. 146).

Intended lessees, etc.—Intended lessees who have been let into possession of property are liable for use and occupation, if the occupation has been beneficial, and so will a person allowed to enter provisionally in contemplation of an agreement for occupation where he afterwards refuses to sign the agreement.

But if a proposed lease cannot or will not afterwards be granted by the landlord, the intended tenant, who has been allowed to take possession, cannot be sued for use and occupation, and this, according to the case of *Rumball v. White* (1 C. and P. 589), even though he may have actually received rents from the subtenants.

So an intended purchaser who has been allowed to go into possession pending investigation of title, which turns out to be bad, is not thereby liable, even for an occupation which may be proved to have been beneficial, unless the contract provide for some payment in the nature of rent to the vendor pending completion. But if the intended purchaser retain possession after a contract for purchase has gone off, he would be liable for subsequent use and occupation.

Sometimes a vendor after conveying property

sold to a purchaser remains in possession ; but he will not thereby become tenant to the purchaser, nor liable for use or occupation, but the purchaser can only sue him for recovery of possession of the property and for *mesne profits* (*Tew v. Jones*, 13 M. and W. 12).

But if the contract provides that the purchaser is to receive all rents and profits from the day fixed for completion, he may recover a fair occupation rent from the vendor for the time subsequent to such day during which the latter remains in possession (*Metropolitan Railway Co. v. Defries*, L.R. 2 Q.B.D. 387).

The measure of damages in an action for use and occupation. — The landlord will be entitled to recover in an action for use and occupation such damages as represent the reasonable value of the occupation. Where there is an agreed rent, then by virtue of the Statute 11 Geo. II., c. 19, s. 4, that will be the quantum recoverable. If the use and occupation consist in "holding over" after the termination of a lease without any fresh agreement as to tenancy, the tenant will presumably be bound to pay the same rent, whether it be claimed as rent or as damages, for use and occupation. But the presumption that the same rent is to continue may be rebutted by evidence pointing to some other amount being agreed upon between the parties.

CHAPTER VI.

DISTRESS FOR RENT.

1.—*What is Distress.*

Distress is a peculiar remedy available to a landlord for the recovery of his rent.

It consists in his right by virtue of the relation of landlord and tenant, and without any special agreement in that behalf, to seize the tenant's goods, or rather enough of them, to satisfy his claim.

It is properly a right to realise from the demised premises the rent which is technically considered as the profit arising out of the land. Accordingly, the power of seizure extends to all goods on the premises whether belonging to the tenant or not, with certain exceptions which will be presently noticed.

Although the general rule is that any person's goods which happen to be on the demised premises may be distrained by the landlord; yet the owner has a remedy against the tenant who has allowed them to be distrained, and may recover from him their value. Again, the owner of the goods is not, as the tenant is, estopped from denying his title as reversioner to distrain (see *Tadman v. Henman* (1893), 2 Q.B. 168).

It followed from the general rule that, strictly speaking, a distress could only be levied on the demised premises, and therefore goods of the tenant elsewhere could not be seized by the landlord by this method. Relying on this rule of the law, dishonest tenants would remove their goods in order to put them beyond the reach of the landlord, a practice which led to the passing of a Statute which, in such cases, authorised the landlord to follow the goods so removed within a certain period (as to this see *post*).

Moreover, it has been decided in modern times that a right to distrain on goods of the tenant *off* the demised premises may, by agreement, be reserved to the lessor. In case of mining leases where it is common for adjoining mines to be worked from the demised premises, such a power of distress appears to be not uncommon (see *In re Roundwood Colliery Company* (1897), 1 Ch. 373).

By Statute also (11 Geo. II., c. 19, s. 8), cattle feeding on any common appendant or appurtenant to the demised premises may be distrained.

The distress, *i.e.*, the goods seized or distrained, was originally considered only as a pledge for payment, and could not be sold by the landlord, but for the last two centuries the landlord has had a power of sale after a certain time has elapsed (see *post*, sect. 7 (f)).

What rent may be distrained for.—A right of distress is incident to a reversion, and therefore any rent, including even such as may be paid by a tenant at will, may be distrained for. But there must be an actual demise at a fixed or ascertainable rent to enable the reversioner to distrain.

Occupation under an agreement for a lease, unless the latter is specifically enforceable, and therefore, according to *Walsh v. Lonsdale* (21 Ch. D. 9), equivalent to a lease, does not give the intended lessor the right to distrain. So a tenant on sufferance is not a tenant at an agreed rent, and is not liable to be distrained. But an implied yearly tenancy at a fixed or ascertainable rent gives the right to distrain.

The rent must be reserved out of corporeal property, *e.g.*, land or houses.

Again, it is only rent strictly speaking which can be distrained for; but fixed sums agreed to be paid as additional rent, *e.g.*, by way of damages for breach of covenants in agricultural leases (see *ante*, pp. 98-100), may, by express agreement, be made recoverable by distress as rent in arrear. Double rent payable under 11 Geo. II., c. 19, s. 118, by a tenant who "holds over" after the end of his term is also recoverable by distress. But debts due from the tenant to the landlord other than for rent cannot be made recoverable in this way. Thus, covenants in brewer's leases authorising the lessors to

distrain for the price of liquors supplied to the tenant are void under the Bills of Sale Acts.

The rent must be actually due as rent, and if the lessor has sued on his covenant and obtained a judgment, he cannot afterwards distrain, because there is no longer any rent due as such. It has become merged in the judgment, and henceforth there is merely a judgment debt for the amount, the proper method of enforcing which is by execution.

It is, however, suggested (see Foa, L. and T., p. 436, 2nd ed.) that if the execution proved unproductive—*e.g.*, if all the goods on the premises were claimed by third parties—the landlord could levy a distress.

2.—*Who may Distrain.*

Reversioners, that is persons who have the immediate reversion on a lease, are entitled to distrain at common law without any special power in that behalf. Certain other persons not having the reversion are also entitled to distrain, either as of common right, or by virtue of an express power, or under statutory or other authority—for instance, executors and administrators, receivers and agents, sequestrators of ecclesiastical benefices, lords of manors.

(1) *Reversioners*.—A person claiming to distrain as reversioner must have a present reversion; and an assignment of it, even by

way of mortgage, takes away his remedy by distress, which would, however, revive on a re-assignment to him.

(a) *Sub-lessors*.—A lessee who sub-lets for the residue of his term, except the last day, has a sufficient reversion to entitle him to distrain, but if the sub-lease be for the whole residue of such term, this operates, if the sub-lease be by *deed*, as an assignment of the term, and therefore the right of distress goes. But in such a case an express power of distress may, it is conceived, be reserved; otherwise the rent can only be sued for.

If, however, the sub-lease is *not by deed*, it cannot operate as an assignment of the term—because an assignment of a term must be by deed—and in that case it seems, though the point is not settled, that the sub-lessor might distrain for rent reserved by the sub-lease.

In the case of a lease and sub-lease, if the lease be surrendered with a view to a fresh one being granted, the effect would be to destroy the reversion on the sub-lease and with it the right of the sub-lessor to distrain the sub-lessee, but this right is now by Statute preserved to the sub-lessor, notwithstanding the surrender (see 4 Geo. II., c. 28, s. 6; 8 and 9 Vict., c. 106, s. 9).

(b) *Yearly tenants*.—A yearly tenant may, as already stated (see *ante*, p. 293), create a sub-tenancy from year to year, which will be good

so long as the first tenancy lasts, and such sublessor may distrain for rent secured by the sub-tenancy.

(c) *Tenant in tail*.—A tenant in tail who grants a lease in excess of his powers (see as to leasing powers of a tenant in tail *ante*, pp. 49-50) has, nevertheless, a good reversion as between himself and his tenant, and can distrain for the rent reserved by such lease.

(d) *Tenants by Curtesy and Tenants in Dower*.—Tenants by the Curtesy and Tenants in Dower, having estates, as it were, carved out of the reversion, can distrain for the rents due from tenants holding underleases of the property created before their interests arose.

(e) *Tenants under execution*.—Tenants under execution, that is, execution creditors of the reversioners who have entered under an execution into possession of the estates vested in such reversioners, have a right to distrain the tenants.

(f) *Mortgagees*.—A mortgagee of the reversion may distrain on a tenant of the mortgagor where the lease was granted *before* the mortgage, the mortgage operating as an assignment of the reversion and with it of the right to distrain; but the mortgagee must give the tenant notice of the assignment before distraining. He may distrain both for rent in arrear at the date of the notice, and also for rent subsequently accruing.

If the lease was created by the mortgagor alone *after* the mortgage, then, in cases not governed by the Conveyancing Act, 1881, the mortgagee cannot distrain unless something has taken place to create a tenancy as between him and the tenant—*e.g.*, acceptance of rent by the mortgagee from the tenant, or notice to him to pay it, which notice has been acquiesced in by the tenant.

By the Conveyancing Act, 1881, a mortgagor in possession has power to grant certain leases, which will be good as between the tenant and the mortgagee. See ss. 10-18, the conjoint operation of which appears to be this: The lease being valid under s. 18 as against the mortgagee, the relation of landlord and tenant is established between the mortgagee and the tenant. The lease has, in effect, been created out of the mortgagee's estate, and is treated as if it had been granted by the mortgagor with his authority. The rights of the mortgagee are, however, suspended until he gives notice to the tenant that he intends to place himself in possession of the property (see *Municipal Permanent Investment Building Society v. Smith* (1888), 22 Q.B.D. 70). On giving such notice he then may exercise all the powers of the landlord for the recovery of the rent, including presumably the power to distrain. The power of distress seems to follow logically from the statement by the Court

of Appeal in the above case as to the effect of these sections.

Distress by mortgagee on mortgagor.—We have already discussed the relation between a mortgagor and mortgagee, and we have shown that attornment clauses in mortgage deeds, in so far as they give the mortgagee a right to distrain on the mortgagor's goods for the purpose of realising his security, are affected by the provisions of the Bills of Sale Acts (see s. 6 of the Act of 1878 ; and ss. 8, 9 of the Act of 1882, and *ante*, pp. 306-310). But by virtue of the proviso in s. 6 of the former Act, a demise by a mortgagee in possession to the mortgagor as his tenant, at a fair and reasonable rent, is not within the operation of those sections, and the rent reserved could be distrained for by the mortgagee.

(g) *Mortgagors.*—A mortgagor may distrain for rent reserved on a lease granted by himself after the mortgage, such lease operating by estoppel, as between mortgagor and tenant.

Where the lease was granted *before* the mortgage the mortgagor has, after the mortgage, properly speaking, no reversion by virtue of which he can distrain—he has parted with it to the mortgagee ; but if he is allowed by the mortgagee to remain in possession he has, in the absence of interference by the latter, an implied authority from him to distrain upon the tenant of the

mortgaged property, and although it may be necessary for the mortgagor to justify the distress as bailiff of the mortgagee, it is not necessary that the distress should be made in the mortgagee's name (see *Reece v. Strousberg* (1885), 54 L.T. Rep. 133).

(h) *Guardians of infants*.—Guardians of infants may in some cases grant leases in their own names of their wards' property and may distrain during such minority for the rent reserved by such leases (see Oldham and Foster on Distress, 2nd ed., p. 76).

(i) *Joint tenants and tenants in common*.—Where a lease has been granted by joint owners, or joint tenants as they are technically termed, each joint tenant has possession of the whole, and therefore any one of them can distrain, though he does so as bailiff of all; and any one of them can authorise a distress being levied and appoint a bailiff for that purpose, and the act of one is good unless forbidden by the others.

The subject is chiefly of importance in connection with leases by trustees, who are always joint tenants.

An assignment by one joint tenant of his joint interest puts an end to the right of the others to distrain for previous arrears of rent. It is a peculiar incident of a joint tenancy that the whole interest vests in the survivor, and he can therefore distrain for arrears accrued in the life time of the deceased joint tenants or tenant.

Co-heiresses.—Co-heiresses, or co-parceners as they are called, are in law one heir, and either they should all join in making a distress; or one may distrain for the whole rent, each having an estate in every part. But they cannot have separate distresses.

Tenants in common, on the other hand, have separate shares, though undivided, and therefore each should distrain for his share of the rent reserved by the lease, but they *may* all join in one distress, provided they justify separately for their respective shares.

(k) *Executors and administrators.* — The executors or administrators of any lessor are now empowered by Statute to distrain for arrears of rent due to such lessor *at the time of his death* under any lease for a term or at will.

The distress may be made after the end or determination of the lease in the same way as if it were subsisting, but any such distress must be within six calendar months after the end or determination of the lease, and while the tenant continues in possession (3 and 4 Will. IV., c. 42, ss. 37, 38).

If a lessee dies before the end of the term, and his administrator continues in possession until after the end of it, all arrears not exceeding six years may be distrained for; but not where the widow of a tenant at will continues in possession.

A distress for rent accruing due *after the death*

of the reversioner, if he died since 1897, and the reversion is *freehold*, must now, by virtue of the Land Transfer Act, 1897, be made by the executor or administrator, the devisee or heir being no longer entitled as succeeding to the reversion to distrain until the executor or administrator has assented to the devise, or conveyed to the heir, as the case may be.* So, on the death of a sole trustee or mortgagee of freehold land, his executor or administrator will, in the first place, be the proper person to distrain (see Conveyancing Act, 1881, s. 30).

In case of a *leasehold* reversion, which by the common law vests on the death of the reversioner in his executor or administrator, the executor or administrator has always been the party to distrain for subsequent rent ; while if he grant an underlease of the premises vested in him he can distrain for the rent thereby reserved to him.

Executors may distrain before probate has been granted to them, and may confirm a distress made by a bailiff in the name of the testator immediately after his death ; but administrators cannot distrain until they have been appointed. One of several executors or administrators may distrain for the whole rent.

(l) *Trustees*.—Trustees having the legal reversion are entitled to distrain for rent reserved by

* In case of an intestacy there may now be no one entitled to distrain until the administrator has been appointed, or a receiver, or some one else authorised by the Court to distrain (see Bullen on Distress, 2nd ed., p. 62, note (y)).

leases granted by them ; but where leases are granted by an equitable tenant for life under the Settled Land Act, 1882, it is doubtful whether the distress should be in their names or in that of the tenant for life (see Bullen on Distress, 2nd ed., p. 77, note (r); *Hood v. Challis*, S. L. Acts, 5th ed., p. 206).

(m) *Corporations*.—Corporations may distrain like any other lessors for rent reserved by their leases, and even where a corporation lease is invalid by reason of non-compliance with the requirements of the law as to leases by bodies corporate, yet if a tenant occupy under such invalid lease, and pays the reserved rent to the corporation or their agent, he becomes *prima facie* a yearly tenant, and therefore subject to distress in respect of the rent payable by him.

(2) *Persons not having the Reversion.*

Receivers.—There is a distinction between a private receiver and one appointed by the Court. The former can only distrain where he has a special power given to him (as in *Jolly v. Arbuthnot*, 4 De G. and J. 224). The latter can always distrain, if necessary, without any order of the Court, unless there is any doubt as to the person legally entitled to the rent ; in which case the receiver should be armed with an order of the Court, so that he can distrain in the name of the person entitled. But if the tenant has attorned to him, *i.e.*,

acknowledged himself as his tenant, the receiver should distrain in his own name.

Agents.—A person authorised to receive rents has no power as such to distrain for them, even if he receives them for his own benefit. Unless he is the legal owner of the reversion he cannot distrain in person. If an agent wishes to distrain in the name of his principal, he must now be certificated by a County Court Judge under the Law of Distress Amendment Act, 1888.

Sequestrators of ecclesiastical benefices.—A sequestrator of the profits of an ecclesiastical benefice may distrain in his own name for rent payable to the incumbent of the benefice.

Lords of manors.—The lord of a manor may distrain for the rent payable by the copyhold tenants of the manor, although they are not tenants in the ordinary sense—*i.e.*, holding under an ordinary lease. But copyhold rents are not within the Statute 32 Hen. VIII., c. 37, which empowers executors and administrators to distrain for arrears of rent.

3.—*What may be Distrained.*

The general rule is that only such things may be distrained as can be returned in specie, in the same state as when taken; a distress being in theory a pledge merely — therefore, money may not be distrained as it cannot be earmarked—but, if it is in a bag sealed up, the

bag with its contents, just as it is, may be seized, because it can be returned in the same state. Again, perishable articles may not be taken.

Corn and growing crops.—Originally, *corn and growing crops* could not be distrained. They are now distrainable by virtue of 2 and 3 Will. and M., Sess. 1, c. 5, s. 3; and 11 Geo. II., c. 19, ss. 8, 9. But where, under 56 Geo. III., c. 50, corn, hay, straw, or other produce of a like nature, has been sold by a sheriff, under an execution against the tenant, and has been severed at the time of sale, the purchaser having agreed with the sheriff not to remove such crops, etc., from the premises, in accordance with the tenant's contract with his landlord, the landlord cannot as against such purchaser distrain for his rent on such crops, etc., nor on any "turnips, whether drawn or growing," if sold pursuant to that Act; nor on any cattle or implements of husbandry kept on the land for the purpose of threshing, carrying, or consuming such crops or other produce under the provisions of this Act, and the agreement directed to be entered into between the sheriff and purchaser as before mentioned (56 Geo. III., c. 50, s. 6).

Young trees, shrubs, etc., in a nursery ground are not distrainable under 11 Geo. II., c. 19, which only applies to corn and other crops, etc., which can ripen and be cut.

Although growing crops distrained may only be sold when ripe, the tenant will not be entitled to any damages unless he has actually suffered by the premature sale.

Where crops have been seized under an execution against the tenant and sold, but remain on the land to be reaped, the landlord can distrain on them for rent subsequently accruing, provided there be no sufficient distress of the tenant's goods and chattels (Landlord and Tenant Act, 1851, s. 2).

After seizure, but before sale by the sheriff, the crops would appear to be protected from distress as being in the custody of the law (as to this, see *post*, p. 346).

Where a tenant leaves his way-going crop in the barns, etc., after the end of his tenancy, under a custom entitling him to do so, the landlord can distrain on it within six months after the end of the term.

Corn, etc., distrained under 11 Geo. II., c. 19, may, when ripe, be cut and stored in any barns on the demised premises, or if there are none, then in barns, etc., on other premises; but in the latter case notice of the place where they are deposited must be given to the tenant within one week after depositing them there.

If the tenant pays or tenders the rent and costs of the distress before the crops are cut, the distress is to cease and the corn, etc., to be delivered up.

Things privileged from Distress.

These may be divided into two classes, (a) things *absolutely* privileged, and (b) things *conditionally* privileged.

Things absolutely privileged are exempt even if there be nothing else on the premises that can be distrained; things conditionally privileged are so only if there are other effects on the demised premises sufficient to answer the landlord's claim.

(1) *Things absolutely privileged from Distress.*

(a) *Animals feræ naturæ*.—Animals naturally wild cannot be distrained. This class includes such creatures as deer, wild rabbits, birds, cats, though not, it seems, dogs. But deer kept in an enclosure (not a park) for profit, and deer in a park when reclaimed, are considered to be distrainable chattels, and so with birds kept in cages or in coops before they can fly.

(b) *Fixtures.*

(As to what constitutes a fixture, see *post*, Chap. XIII., "Fixtures.") There appears to be no difference, as regards the privilege from distress, between landlord's fixtures and tenant's fixtures, though the latter, where removable by the tenant, may be taken in execution by a creditor of the tenant.

In this class have been held to be included a railway (N.B.—Railway rolling stock is specially exempt by Statute, see *post*, p. 344);

machinery attached to the freehold merely for the purpose of being more conveniently used as such; moveable parts of fixed machinery necessary thereto, and constructively attached to it, even while temporarily removed; constructive fixtures, *e.g.*, doors, windows, keys, and quasi-fixtures, *e.g.*, charters and deeds relating to the inheritance.

As to the remedy of the tenant when fixtures have been wrongfully removed under a distress, see *post*, Chap. XIII., "Fixtures."

(c) *Goods delivered to a Person in the way of his Trade.*

This is one of the most important classes of things exempt from distress. The rule is that all things delivered to a person exercising a public trade to be carried, wrought, worked up, or managed in the way of his trade or employ, are absolutely privileged (see the leading case of *Simpson v. Hartopp*, 1 Sm. L.C. 421).

The test seems to be substantially whether the articles are sent to a trader for a particular object, and to be then returned, or whether they are intended to remain on the demised premises even in the way of trade.

If the former, they are exempt; if the latter, they are distrainable, though it may be only conditionally.

An illustration of the distinction is afforded by the case of *Wood v. Clarke* (1 Tyr. 314),

where it was held that materials sent to a weaver to be made up were absolutely exempt ; but not machines lent to him for the purpose of working them up. The machine would fall within the class of tools of trade which are not exempt, unless there be other sufficient distress on the premises (see *post*, p. 350 "*Tools of Trade*").

N.B.—Machines if in actual use would be absolutely exempt under another head, *vide*, "*Things in actual use*," *post*, p. 341.

Again, a machine hired for trade purposes, *e.g.*, a gas engine, threshing machine, etc., would be conditionally exempt only; but, *e.g.*, a sewing machine hired by a person for private use only would not be exempt unless while actually being used.

The trade must be one *bona fide* carried on upon the premises where the distress is levied (see *Edwards v. Fox* (1896), 60 J.P. 404).

Goods warehoused in the ordinary course of business are exempt; also goods sent to an auctioneer to be sold on premises actually in his occupation, though only temporarily hired.

But where an auctioneer sells a tenant's goods on the tenant's premises, and also other goods along with them for convenience—a common practice—the auctioneer is not in such case the occupier of the premises, so as to exempt from distress the goods which do not

belong to the tenant (see *Lyons v. Elliott*, 1 Q.B.D. 210).

Again, although a coach sent to a coach maker's to be sold is privileged, it seems that a horse and carriage standing at livery are not.

A ship in course of building is not exempt (see *Clarke v. Millwall Dock Company*, 17 Q.B.D. 494); nor are beer casks belonging to a brewer on a publican's premises to be returned to the brewer when empty; while in the case of *Von Knoop v. Moss and Jameson* (7 T.L.R. 500), Mathew, J., held that privilege could not be claimed in respect of a picture sent back by a purchaser to the artist to be altered, which was seized by the landlord of the studio.

By the same judge it was also held that an artist does not carry on a public trade within the meaning of the rule (*ib.*).

Among other things privileged under this rule are goods pledged with a pawnbroker; goods in possession of a factor for sale, or deposited by him for safe custody in a warehouse; goods belonging to a guest while at an inn, provided they are actually on the inn-keeper's premises.

The horse or carriage which conveys goods to a person in the way of his trade, and the package in which the goods are enclosed, are also exempt under this rule.

(d) *Things in actual Use.*

If a thing is actually being used it is absolutely exempt from distress—*e.g.*, clothes while on the person of the wearer ; but clothes not being worn are only exempt as included in “ clothes, bedding and tools of trade,” which to the value of £5 are exempt by the Law of Distress Amendment Act, 1888 (see *infra*).

Other things commonly mentioned as illustrating this class of exemption are a horse being ridden or driven, or an axe being used.

(e) *Clothes, Bedding and Tools to the value of £5.*

By the Law of Distress Amendment Act, 1888 (s. 4), the wearing apparel and bedding of the tenant and his family, and the tools and implements of his trade to the value of £5, are now exempt from distress, except where the tenancy has expired *and* possession of the premises has been demanded *and* the distress is made not earlier than seven days after such demand.

Two questions arise on the construction of this enactment—(1) Whether the £5 value is inclusive; (2) Whether bedding includes bedstead. The first question should, it is submitted, be answered in the affirmative ; while, on the second, it has been held recently by the Queen’s Bench Division that bedding includes the bedstead (see *Davis v. Harris*, W.N., 1900, 17).

(f) Lodgers' Goods.

By the Lodgers' Goods Protection Act, 1871, lodgers' goods are protected from distress at the instance of any superior landlord for arrears of rent due to such superior landlord from his immediate tenant.

In case of any such distress being levied or authorised to be levied, the lodger may serve the superior landlord, or his bailiff, or the distrainer, with a written declaration setting out that the tenant has no interest in the goods distrained, or threatened to be distrained, and that the same belong to or are in the lawful possession of the lodger, and also setting forth whether any and what rent is due, and for what period, from the lodger to his immediate landlord; and the lodger may pay to the superior landlord, bailiff, or distrainer the rent, if any, so due, or so much as is sufficient to satisfy his claim. The declaration must have attached to it a correct inventory, subscribed by the lodger, of the goods therein referred to, and if the lodger knowingly makes or subscribes a declaration false in any material particular he is guilty of a misdemeanour (s. 1).

Any payment by the lodger under this section operates, *pro tanto*, as a payment of his own rent (s. 3).

If the distress is proceeded with after service of the declaration and inventory and payment

or tender of rent by the lodger, it will be deemed an illegal distress, and the lodger may apply to a magistrate for an order for the restoration to him of the goods, and an order accordingly may be made, and the superior landlord shall also be liable to an action for damages at the suit of the lodger (s. 2).

The Act has been strictly construed. Thus the declaration referred to in s. 1 only operates against the particular distress levied or threatened; it is no protection against a subsequent distress, unless it had been authorised or threatened before the declaration was made (*Thwaites v. Wilding*, 12 Q.B.D. 4).

On the other hand, the declaration need not state that it is made by a lodger, nor that no rent is due if such be the case (see *ex parte Harris*, 16 Q.B.D. 130).

What constitutes a person a lodger.—A lodger is a person residing on premises over which the mesne landlord retains control, though the latter need not reside on the premises. But it is essential that the lodger should sleep on the premises (see *Heawood v. Bone*, 13 Q.B.D. 179).

A lodger is distinguished from an under-tenant in that the latter has exclusive occupation, whereas, in the case of a lodger, some control, *i.e.*, such as the master of a house usually has (see *Morton v. Palmer*, 51

L.J. Q.B. 7) over the lodgings, is retained by the landlord.

It is doubtful whether a boarder in a boarding house is a lodger within the meaning of this Act. Having regard to the language employed, it is submitted that he is not within the protection of the Act.

If the landlord should sell the distress within five days the lodger could sue him, even though he has not served him with the declaration until after the sale.

(g) *Railway Rolling Stock.*

Under the Railway Rolling Stock Protection Act, 1872, railway rolling stock not belonging to the tenant in whose "*work*" it is, and if clearly marked with the owner's name, is exempt from distress for rent payable by such tenant (s. 3).

"*Rolling stock*" includes wagons, trucks, carriages of all kinds, and locomotive engines used on railways (s. 2).

"*Work*" includes any colliery, quarry, mine, manufactory, warehouse, wharf, pier or jetty, in or on which is any railway siding (*ib.*) ; also a shed connected by a siding with a railway (*Easton Estate Company v. Western Waggon Company*, 54 L.T. 735).

"*Tenant*" includes a lessee, sub-lessee or other person having an interest in a "*work*" under a lease or agreement, or by use and

occupation, or being otherwise liable to pay rent in respect of a work (s. 2).

“Rent” includes a royalty or other reservation in the nature of rent (*ib.*).

If the tenant has any interest in the rolling stock, the landlord may distrain and dispose of it in the same manner as if it wholly belonged to the tenant, and in case of dispute between the landlord and the parties claiming the rolling stock, as to the method of disposing of the same, the dispute is to be settled by a court of summary jurisdiction (s. 5).

If any such rolling stock is improperly distrained, a summary order of a court of summary jurisdiction may be obtained for its restoration, or for payment of the value and costs (s. 4).

An appeal lies to Quarter Sessions from any order made under this Act (s. 6).

(h) *Hired Machinery and Breeding Stock on Agricultural Holdings.*

On holdings to which the Agricultural Holdings Act, 1883, applies, machinery *bona fide* hired by the tenant for use in his business, and also stock of other persons on his premises solely for breeding purposes, are absolutely privileged from distress for rent due by such tenant (s. 45). Hired machinery would perhaps include machinery on the tenant's premises under a hire-purchase agreement, by

which the property does not vest in the hirer until all instalments of purchase-money have been paid.

(i) *Goods in the Custody of the Law.*

Goods of a tenant which have been taken by the sheriff or other officer of the law in execution against such tenant, cannot be distrained by the landlord for rent due to him from his tenant, unless the sheriff should abandon possession, or the goods, if sold by the sheriff, should be left by the purchaser on the premises for more than a reasonable time.

Further exceptions to this rule.—In order to prevent collusion between tenants and their creditors, the goods seized under any execution issued out of the High Court must not be removed, unless the execution creditor pays the landlord the arrears of rent—not exceeding one year's rent (8 Anne, c. 14, s. 1). See further as to this, *post*, s. 10 (a), and as to the rule in cases of seizure under County Court process, *post*, s. 10 (b).

Again, an execution which is irregular or fraudulent, or which has been waived, will not prevent the landlord from distraining.

Further, growing crops which have been seized and sold under an execution against the tenant are, notwithstanding any bargain and sale, or assignment by the sheriff, liable so long as they remain on the premises to distress for

subsequent rent, unless there are other goods of the tenant sufficient to satisfy such rent (14 and 15 Vict., c. 25, s. 2).

Goods in possession of a High Court receiver can be distrained upon, but the leave of the Court should first be obtained.

(k) Other Things absolutely privileged from Distress.

(1) Gas meters and apparatus let on hire by any gas company incorporated by Act of Parliament are exempt from distress (10 and 11 Vict., c. 14, s. 14; 34 and 35 Vict., c. 41, s. 18). Gas stoves are within this provision (*Gas Light and Coke Company v. Hardy* (1886), 17 Q.B.D. 619).

(2) Frames, looms, and apparatus intended for the purpose of being used or worked in textile manufactures, or works connected therewith, are (whether lent on hire or not) exempt from distress, unless the rent be due by the owner of the frames, or apparatus, or any part thereof (6 and 7 Vict., c. 40, s. 18).

(3) Communication pipes and other necessary works laid down by the "undertakers"—i.e., the water companies—in houses not exceeding £10 in annual value for the supply of water for domestic purposes are exempt (10 and 11 Vict., c. 17, s. 44).

Also meters and instruments let for hire to consumers by the undertakers, duly authorised,

and pipes and other apparatus for the conveyance, reception, and storage of water (26 and 27 Vict., c. 93, s. 14).

(4) Electric lines, meters, fittings, or apparatus belonging to the "undertakers," if placed on premises not in their possession for the purpose of supplying electricity are exempt from liability to distress (45 and 46 Vict., c. 56, s. 25).

(5) Goods of ambassadors and ministers of foreign states and the goods of their servants are absolutely privileged (7 Anne, c. 12, s. 3). The privilege is not confined to foreigners, nor, as to servants, to domestic servants.

(6) Crown property is apparently exempt from distress (see Woodfall, L. and T., 16th ed., 469).

(7) Perishable articles.—We have already mentioned (*ante*, p. 335) that perishable articles, which would include such things as fruit, meat, fish, etc., are exempt from distress.

(8) Things in which there can be no valuable property.—This class would include (*inter alia*) wild animals (see as to these *ante*, p. 337).

(2) *Things conditionally privileged from Distress.*

(a) *Beasts of the plough, instruments of husbandry, and sheep.*

Beasts of the plough and sheep, whether belonging to the tenant or his sub-tenant, or some other person, which improve the land, are

exempt from distress, provided there be other sufficient distress on the premises (51 Hen. III., stat. 42 : *Keen v. Priest*, 4 H. and N. 236).

Young, unbroken colts and steers are not exempt within this rule.

Instruments of husbandry are also conditionally privileged (see "*Tools of Trade*," *post*, p. 350).

The landlord is protected in distraining on cattle and beasts of the plough, though there prove to be other effects on the premises, provided he had reasonable grounds for believing there was not other sufficient available distress. Where both kinds of property are distrained the landlord is not obliged to sell the other effects first.

If sheep are distrained and sold, in violation of the rule, the owner is entitled to recover as damages their full value. Cattle agisted—that is taken into graze—are by common law generally distrainable, though it has been held that if they are only temporarily agisted—*e.g.*, when on the way to market—they are privileged (see further as to the exemption of agisted stock, *post*, p. 351).

If a tenant drive cattle off his land in face of the landlord in order to prevent a distress, the landlord may follow them, but not where they go off the land of their own accord before he sees them ; and once the distrainor

has entered the land to distrain, the cattle cannot afterwards be driven off to prevent the distress.

Cattle which have strayed on to land through defects in fences which the landlord or his tenant ought to have repaired, cannot be distrained for rent until after they have been there a night and a day without pursuit by their owner, and until after actual notice has been given to the latter, and he has neglected to remove them.

But, if cattle escape through the negligence of their owner and stray on to land, they become trespassers, and are immediately distrainable by the landlord of such land for any arrears of rent due from the tenant of such land.

If there be things conditionally privileged and the only other distress on the premises consist of growing crops, the landlord is not obliged to distrain on the latter first, but may distrain the things conditionally privileged.

(b) *Tools, etc., of Trade or Business.*

The instruments of a man's trade, business or profession, not in actual use (as to which see *ante*, "Things in actual use"), are privileged, if there be other sufficient distress (see *Fenton v. Logan*, 9 Bing. 676), where the rule is correctly stated by Park, J., the head note to this case being misleading.

Under this rule would be included business books, *e.g.*, ledgers, and other books, documents and papers; also it seems a lawyer's or scholar's books.

(c) *Agisted Stock on Agricultural Holdings.*

On holdings to which the Agricultural Holdings Act, 1883, applies (see *post*, Chap. XIII.), "agisted" live stock, that is live stock taken in to feed at a *fair price*, is conditionally privileged; and if such stock be distrained because there is no other sufficient distress to be found, the sum recoverable under such distress shall not exceed the amount of the price agreed to be paid for the feeding; or if part has been paid the amount remaining unpaid (s. 45). The owner may redeem the stock at any time before sale on paying to the distrainor a sum equal to such *price* as aforesaid, and any such payment shall be in full discharge as against the tenant of any sum of the like amount which would otherwise be due from the owner of the stock to the tenant for the feeding price (*ib.*). Provided that, so long as any portion of the stock remains on the holding, the right to distrain such portion shall continue to the full extent of the price originally agreed to be paid for the feeding of the whole of such stock, or if part of such price has been *bona fide* paid to the tenant under the agreement, then to the full extent of the price then remaining unpaid (*ib.*).

The "*fair price*" mentioned in the definition of agisted stock (*supra*) need not be in money, *e.g.*, it may be "milk for meat" (*London and Yorkshire Bank v. Belton* (1885), 15 Q.B.D. 457), but it must be a payment strictly for agistment, and not in the nature of rent for use and occupation (*Masters v. Green* (1888), 20 Q.B.D. 807).

4.—*When a Distress may Lawfully be Made.*

When rent is actually due, the landlord's right to distrain at once arises, and nothing can take it away except payment of rent, or its equivalent. Taking security for the rent will not in itself be sufficient to deprive the landlord of his right, although it may be evidence of an agreement to suspend it during the subsistence of the security (see *Palmer v. Bramley* (1895), 2 Q.B. 405).

How the right may be taken away.—But the right may be suspended by agreement, either express or implied, *e.g.*, where allowances from rent have been made in error, though with full means of knowledge, such allowances may operate as a settlement of account between the landlord and tenant so as to stop the right of distress.

Again, where a tenant for his own protection has been obliged to pay ground rent, property tax, or other taxes and rates or other outgoings, which, as between him and his landlord, ought

to have been paid by the latter, such payments operate, *pro tanto*, in satisfaction of his own rent, and to that extent prevent the right of distress.

Generally speaking, where a tenant has a claim against his landlord which he might in an *action* for the rent set off against the landlord's claim, such right of set off will not avail against the landlord's right to *distrain*; but there is a statutory exception to this under the Agricultural Holdings Act, 1883, which provides that any compensation due under that Act to a tenant (as to this see *post*, Chap. XIII.), may be set off against the rent due, and the balance only may be distrained for (s. 47).

An agreement to take interest on the rent due will not deprive the landlord of his right to *distrain*.

Tender of the rent.—A valid tender of the rent due will be equivalent to payment, and a distress thereafter is unlawful.

The conditions of a valid tender are important to note. Thus, the tender must be of the exact amount, unconditional—tender “under protest” would be good—and to the right person, *i.e.*, to the landlord, or his agent either expressly or impliedly authorised; *e.g.*, his bailiff holding a distress warrant would be impliedly authorised to receive the rent; but tender to a broker's man merely left in possession, and with no actual authority to

receive the money, is not sufficient. The money must actually be produced unless production be expressly or impliedly dispensed with.

Again, the *time of making* the tender is important.

If the tender is made *before the distress* is actually put in it is a good tender, and even after a distress warrant has been signed and handed to a broker, the tenant may safely tender the amount of the rent without any expenses ; and a distress levied thereafter would be illegal.

If the tender is made *after the distress* has been put in, but *before it has been impounded* (as to what constitutes impounding see *post*, pp. 373-377), the tender of the rent must be accompanied with the costs of the distress (see as to costs *post*, p. 382).

If the distress has been *impounded*, the tenant may still within five days from the time of the distress tender the amount of the rent and expenses, and thus render illegal any further proceedings on the part of the landlord. If he does not make such tender within the five days, then the distress cannot be impugned.

As the property in the goods remains in the tenant, he can always redeem them at any time before actual sale on tendering the amount due and expenses.

If the landlord retains possession of the goods distrained after tender of the rent and

expenses, he may be liable to an action for conversion ; as the tenant can always sell the goods under distress, and subject thereto a purchaser from him has the same right.

As to tender of rent in case of a distress on growing crops, see *ante*, p. 336.

Distress after termination of the tenancy, etc.—Termination of the tenancy will take away the right of distress except in the cases mentioned, *post*, pp. 356, 361. A surrender of the lease will put an end to it; but the surrender must be complete. As to the requisites of a valid surrender, see *post*, Chap. X.

Eviction of the tenant by title paramount will also prevent a distress by the person who granted the lease, though the tenant remain in possession under a fresh agreement with the evictor. So a distress cannot be levied after the landlord has declared the lease to be forfeited for breach of covenant ; though if he has not exercised his right to avoid the lease he would by subsequently distraining lose his right as regards that particular cause of forfeiture. But though a landlord may waive a cause of forfeiture by distraining for after rent ; a notice to quit cannot be waived without the consent of both parties, and therefore the landlord cannot after expiration of the notice distrain for subsequent rent on the tenant who is merely "holding over" without any new tenancy or arrangement being made.

Where, notwithstanding the expiration of the tenancy, the tenant is by the custom of the country allowed to continue in possession, *e.g.*, for the purpose of threshing out corn, etc.—the term is considered to be prolonged accordingly and a distress for rent may be made during such further holding.

5.—*Injunction against a Threatened Distress.*

Where a landlord threatens a distress which is not justifiable, he may be restrained from so doing by injunction (see *Shaw v. Earl of Jersey*, 4 C.P.D. 359) ; though the injunction will usually be granted upon the terms that the rent be paid into Court (as in *Walsh v. Lonsdale*, 21 Ch. D. 9).

6.—*Limitations on the Right of Distress.*

(a) *In case of bankruptcy of the tenant.*—Where the tenant becomes bankrupt, the landlord is allowed to distrain to a limited extent.

By the Bankruptcy Act, 1883, s. 42 (1), and the Bankruptcy Act, 1890, s. 28, the landlord cannot now distrain for more than six months' rent due prior to the adjudication in bankruptcy of the tenant ; but, subject to this, no leave of the Court is necessary to enable him to distrain, as in the case where a tenant company is in liquidation (see *post*, p. 357).

If more than six months' arrears of rent are due at the date of adjudication, the landlord can recover the balance by proving for it in the

bankruptcy, along with the other creditors of the tenant.

For rent accruing due *after* adjudication, if the trustee do not disclaim the lease, or if he remain in possession, the landlord may distrain in full.

Distress is not a "legal process" which can be stayed under s. 10 (2) of the Bankruptcy Act, 1883.

(b) *In case of a tenant company in liquidation.*—By the conjoint operation of ss. 87 and 163 of the Companies Act, 1862, a distress cannot be levied on a tenant company in liquidation without the leave of the Court. And this leave will not be given as a matter of course.

In the first place, it will not be given at all where the rent has accrued due *before* the winding up order.

For such rent, as also for rent due at the time of presentation of the winding-up petition, the landlord must, it seems, prove as for an ordinary debt in the winding up.

It is not clear that this rule applies where the company are sub-tenants only from whom the landlord holds a collateral security for the rent due by the lessee (see *ex parte Clemence* (1883), 23 Ch. D. 154; *in re New City Constitutional Club Company* (1887), 56 L.J. Ch. 332).

Even if the distress has been levied, but not completed by sale, before the winding up com-

menced, further proceedings thereunder may be restrained (per Stirling, J., *in re Roundwood Colliery Company* (1897), 1 Ch. 373).

In the next place, if the rent accrue due *after* the winding-up order has been made, the landlord will be allowed to distrain where the company continues in possession "for its own purposes and with a view to the realisation of the property to better advantage," so that the landlord cannot get possession (see *in re Lundy Granite Company*, 6 Ch. App. 466). In such a case it is considered only equitable that leave should be given to the landlord to distrain. The rent in such case is also regarded as expenses in the winding up (see *Shackell v. Chorlton* (1895), 1 Ch. 378).

If the winding up commences between two quarter days the quarter's rent, when it becomes due, may be apportioned and distress levied for that proportion which accrued due since the commencement of the winding up, viz., the date of the presentation of the winding-up petition (*Shackell v. Chorlton (sup.)*).

A landlord may obtain leave to distrain on a company in liquidation under the above rule, notwithstanding that under his lease he has the ordinary power of re-entry for non-payment of rent (see per Hall, V.C., *in re North Yorkshire Iron Company*, 7 Ch. D., at p. 665).

There is nothing in the Companies' Acts to prevent a landlord from distraining upon goods

belonging to a company in liquidation, which happen to be on premises occupied by his tenant, for rent due to him from the latter.

So the landlord may distrain on chattels comprised in debentures, if their value is less than the debenture debt, because such chattels are no longer the property of the company, but belong to the debenture holders, whose position is no better than that of any stranger having goods upon premises occupied by other persons, and liable to distress thereon.

(c) *In case of agricultural holdings, etc.*—We have already seen (*ante*, p. 345) that on holdings to which the Agricultural Holdings Act, 1883, applies, hired machinery and breeding stock are *absolutely*, and agisted cattle *conditionally*, privileged from distress.

Moreover, by the same Act (s. 44), the landlord of a holding to which that Act applies may not distrain for rent which became due more than one year before the making of such distress.

Also, as already stated (*ante*, p. 353), any right of distress on such a holding is subject to set off for compensation due to the tenant under the Act.

As to the procedure in case of any dispute relative to any distress, see s. 46 of the Act.

7.—*Proceedings in Distress.*

(a) *At what time a distress may be made.*—A distress can only legally be made between sunrise and sunset.

Many subtle points have been raised in bygone times as to the exact meaning of sunrise and sunset, and as to the mode of proving it. Notwithstanding certain dicta in the leading text books, which still state the law in the old terms, it is probable that at the present day it would be sufficient to prove the time of sunrise or sunset, as the case may be, by the clock and the almanack, which would be sufficient evidence in the absence of proof to the contrary (see Oldham and Foster on Distress, p. 184).

It is doubtful whether a distress may be levied on Sunday ; but, at any rate, it does not appear to be a "process" within the meaning of the Sunday Observance Act, 1677, s. 6 of which forbids the execution of any process on Sunday. It is, perhaps, safer not to attempt a levy on that day.

No distress until rent in arrear.—Rent is not in arrear until after midnight of the day on which it becomes due, and, therefore, cannot be distrained for until the next day. But by custom or agreement rent may be recoverable by distress either before or after the time when it would otherwise be so recoverable. Or it may be postponed until after some particular kind of demand has been made. But where the rent is made payable on demand, the distress operates as a demand.

Distress after end of tenancy. — A distress must be made either during the term, or

within six calendar months after the determination, *i.e.*, by effluxion of time or notice to quit (see *Kirkland v. Briancourt*, 1890, 6 T.L.R. 441) of the tenancy, and during the continuance both of the landlord's interest and the tenant's possession (8 Anne, c. 14, ss. 6, 7); and where by custom a term is prolonged after the nominal date of its termination (common in agricultural tenancies), the landlord may distrain during such further period of possession by the tenant, although it may be more than six months after such termination.

If a tenant holds over part of the demised property, the landlord may distrain on such part for the rent due for the whole. But if the holding over amounts in fact to a new tenancy of such part, the landlord cannot take advantage of the Statute 8 Anne, c. 14, ss. 6, 7, to distrain on such part for the rent due in respect of the whole of the original tenancy (see *Wilkinson v. Peel*, 1895, 1 Q.B. 516).

The six months' limit mentioned in the Act does not apply to a lease from a tenant for life, prolonged under the Landlord and Tenant Act, 1851, until the end of the current year, by way of compensation to the tenant for giving up his claim to emblements (as to these see *post*, Chap. XIII.).

It is essential in order that the landlord may distrain that the tenant or, in case of his death, his legal representative should retain exclusive

possession during the six months after the termination of the tenancy.

(b) *The amount of rent recoverable by distress.*—No arrears of rent can be recovered by distress but within *six* years next after they became due, or within six years next after a written acknowledgment of the same, signed by the tenant or his agent, shall have been given to the landlord or his agent (3 and 4 Wm. IV., c. 27, s. 42).

This right to recover six years' arrears of rent by distress exists so long as the relation of landlord and tenant lasts, however long the term of the lease, and even though no rent may have been paid for any number of years.*

In case of Agricultural Holdings.—In the case of a distress on holdings to which the Agricultural Holdings Act, 1883, applies, as we have seen (*ante*, p. 359), the landlord cannot distrain for rent due more than one year before the distress (s. 44); provided that, in cases where by the usual course of dealing between the landlord and tenant payment of the rent is deferred for a quarter or half a year beyond the time at which it legally becomes due, the rent is *for the purpose of that section* deemed to have become due at such later date (*ib.*). See as to the meaning of this proviso, *ex parte Bull* ((1887), 18 Q.B.D., 1842), where it was held that,

* *Twenty* years' arrears can be recovered in an action on the covenant to pay rent (see *ante*, p. 141).

in a case within the proviso, the landlord was entitled to distrain for rent then legally due, but not yet payable according to the course of dealing, and also for rent which had become legally due more than a year previously, but had become payable according to the course of dealing less than a year previously, although the total amount distrained for exceeded one year's rent.

Thus, where a year's rent became due on June 24, 1885, and another year's rent on June 24, 1886, the landlord could distrain on June 23, 1886, for the year's rent which became due on June 24, 1885, and on June 25 could distrain for the rent which became due on June 24, 1886; but if he was accustomed to allow the tenant three months before he expected payment of any part of the rent, then, by the proviso in the section, he would have three months longer to distrain for the rent which became due on June 24, 1885, and the distress could be made for that at any time up to Michaelmas, 1886.

The postponement of the date at which the rent is deemed to be due is only for the purpose of fixing the period beyond which the distress is not available, and does not take away the landlord's right to distrain at once for the rent as soon as it is legally due.

(c) *The place where the distress is to be made.*—The general rule, as already stated (*ante*, p. 323),

is that a distress can only be made upon the demised premises in respect of which the rent is payable.

Exceptions.—By agreement, it seems a distress may be taken on other lands (see *re Roundwood Colliery Company*, 1897, 1 Ch. 373, cited *ante*, p. 353, where the lease was a mining lease).

Again, the *Crown* may distrain on land of their tenants wherever situate.

Goods of the tenant on the *highway*, if on that half of it immediately adjoining premises adjacent thereto, may be distrained, notwithstanding the old Statute of Marlbridge (52 Hen. III., c. 15—which forbids generally a distress being levied on the highway), because the presumption of law is that the ownership of the soil extends to the middle of the highway on which it abuts.

Again, by 11 Geo. II., c. 19, s. 8, cattle feeding upon a common appendant or appurtenant to the demised premises may be distrained there. Also, as we have already mentioned (*ante*, p. 349), if cattle be seen to be driven off the demised premises to prevent a distress, they may be followed and taken even on the highway.

In case of fraudulent removal of goods.—The most important exception is that in case of the fraudulent removal of goods by a tenant in order to avoid a distress. By 11 Geo. II., c. 19, where a tenant “fraudulently or clan-

destinely" removes his goods from demised premises to prevent distress, such goods may be followed by the landlord, and seized anywhere within thirty days (s. 1), provided that the goods have not previously been sold to a *bona fide* purchaser ignorant of the fraud (s. 2).

Several conditions are necessary to the application of this Act. First, the goods must have been the tenant's own property at the time of removal—goods mortgaged by a bill of sale, or, presumably, goods held under a hiring or hire-purchase agreement, are not the tenant's, and may therefore be removed by the persons to whom they belonged to protect them from distress without such removal coming within this Act (see *Tomlinson v. Consolidated Credit Corporation*, 1889, 24 Q.B.D. 135).

Moreover, the goods must have been fraudulently removed with the double object of benefiting the tenant and of avoiding a distress. A removal may be fraudulent even if not clandestine, *i.e.*, even if done openly and with notice to the landlord—if it was done in order to deprive the landlord of his right of distress, it is fraudulent—and it does not appear to be necessary for the landlord to prove that there were not other sufficient goods left on the premises to satisfy a distress.

Again, the goods must have been removed *after the rent became due*.

As rent becomes due on the morning of the

day when it is payable, a removal on that day for the purpose of avoiding a distress would be illegal, though the landlord could not follow the goods until the next day, as the rent would not be in arrear until then.

This power of distress only applies where the goods, if they had remained on the premises, would have been distrainable. Therefore, all the conditions of a valid ordinary distress must be fulfilled.

The Act further provides against tenants fraudulently removing their goods and against any other persons knowingly assisting in a fraudulent removal or in concealing goods so removed, by imposing a penalty of double the value of the goods to be recovered by action of debt (s. 3); or if the value is less than £50, then summary proceedings for the recovery of such double value may be taken before justices, with an appeal from their decision to Quarter Sessions (ss. 4-6).

In proceeding against a third person for knowingly assisting in a fraudulent removal it is essential to prove that such person not only assisted in the removal but was privy to the fraudulent intent of the tenant.

Where goods have been fraudulently removed within the meaning of this Act, the landlord and his bailiff are empowered to break open houses or other premises for the purpose of retaking goods fraudulently secreted there; but

the presence of a constable is required, and if the goods removed are in a dwelling house, an oath has first to be made before a justice of the peace that there is reasonable ground to suspect that the goods are therein (s. 7).

A removal may be fraudulent though the party to whose premises the goods have been removed was not privy to the fraud.

In the metropolitan police district a constable may stop, and detain until inquiry can be made, any vans, etc., which he finds employed in removing the furniture of any house between 8 p.m. and 6 a.m., *or* whenever he shall have good grounds for believing that the removal is for the purpose of evading payment of rent (2 and 3 Vict., c. 47, s. 67).

There is nothing in the Act 11 Geo. II., c. 19, to prevent a creditor removing goods with the consent of his debtor, in order to satisfy a *bona fide* debt, even though he is aware that the debtor is in embarrassed circumstances and apprehensive of distress.

(d) *The way in which the distress is to be levied.*—A distress is levied by the landlord or his agent entering upon the demised premises, and seizing sufficient goods to answer his claim. The seizure is necessary to complete the levy; but it may be constructive, as where the landlord takes hold of any distrainable article and states that he distrains it in the name of all the goods

not privileged from distress; or, even without actual seizure of anything, the landlord may come upon the premises and state that he distrains; or a distress may be constituted by any acts or words of the landlord showing a clear intention to distress.

Bailiff to be certificated.—The seizure, whether actual or constructive, may be carried out either by the landlord himself or his duly authorised bailiff; but a bailiff employed to levy a distress must now hold a certificate in writing under the hand of a County Court Judge authorising him to act as such (Law of Distress Amendment Act, 1888, s. 7).

The certificate may be general or special, *i.e.*, for a particular distress — the latter may be granted also by a County Court Registrar (Distress for Rent Rules, 1888, r. 3). The landlord may employ whichever kind of bailiff he pleases.

The bailiff holds his certificate virtually during good conduct, and is liable to have it cancelled at any time by a County Court Judge without any reason being given (Law of Distress Amendment Act, 1895, s. 1).

Any person not duly certificated who levies a distress contrary to the Act of 1888, is liable not only to an action for trespass, but on summary conviction to a fine of £10 (*ib.*, s. 2). And by s. 4 of the same Act, on complaint that goods exempted from distress under s. 4 of the

Act of 1888, viz., bedding, clothes, etc., up to £5 have been distrained, a court of summary jurisdiction may order their restoration ; or if they have been sold, a sum to be fixed by the Court as their value shall be paid to the complainant by the person who levied the distress, or directed it to be levied, *i.e.*, either the bailiff or the landlord.

Where a distress has been levied, either by the landlord personally, or by his properly certificated bailiff, there appears to be nothing to prevent an uncertificated bailiff or broker's man being left in possession to complete the distress by sale, etc.

It has been held that the managing director of a company is a bailiff of the company within the meaning of s. 7 of the Act of 1888, and therefore requires to be certificated (*Hogarth v. Jennings*, 1892, 1 Q.B. 907).

As to the duration, renewal, and cancellation of certificates, see the Distress Amendment Acts, 1888, 1895, and the rules made thereunder (*post*, Appendix).

Liability of landlord.—Notwithstanding the provisions of these Acts and Rules, a landlord is not relieved from his common law liability in respect of an improper distress ; so that while he is not liable for an *illegal* distress, made by a certificated bailiff, unless authorised or ratified by him, he is for an *irregular* distress.

Instances of *irregular* distress would be—distraining for goods to an excessive amount,

improperly selling, or making extortionate charges against the tenant, etc.

Illegal distress would be where there was no right of distress at all, or the mode of entry to distrain was unlawful, or privileged goods were seized.

Distress warrant.—A bailiff is usually authorised to distrain by a distress warrant (see for the form of this, *post*, Appendix). This will indemnify him in a case where there was no right to distrain, and the bailiff has therefore become personally liable to proceedings at the instance of the tenant. But the warrant will not indemnify the bailiff against the consequences of irregularities in the mode of levying the distress, on the part of such bailiff or his servants. But the landlord may, of course, give an absolute indemnity against everything except personal misconduct. If the bailiff by negligence or misconduct cause loss to his employer, he will be liable to him in damages.

An unauthorised distress may be subsequently ratified and the ratification will be equivalent to a previous request.

Entry on the demised premises to make the distress.—This is a very important subject for consideration. The law most jealously guards the possession of the tenant, and will not allow anything in the nature of a breaking into the demised premises for the purpose of levying a distress.

Forcible entry and re-entry.—Thus, an *outer* door, even of a portion not within the curtilage of the dwelling house, must not be broken open—(see *American Concentrated Must Company v. Hendry* (1893), 62 L.J. Q.B. 388)—though, once entrance has been properly effected, inner doors and boxes may, if necessary, be forced. A distrainor may enter through an open door, or he may open the door by any of the ordinary modes of ingress, viz., by turning the key, lifting the latch, or drawing back a bolt, but must not put his hand through a hole in the door or a broken pane of glass to remove a bar, latch, or fastening, because that is not a usual mode of entry.

Again, entrance through an open window is lawful, but a window, though unfastened, must not even be opened; and, on the other hand, if the window be open ever so little it may be pushed wider open to admit the distrainor (*Crabtree v. Robinson* (1885), 15 Q.B.D. 312).

In the case of *Long v. Clarke* (1894), 1 Q.B. 119, it was held that climbing over a wall or fence, to gain entrance through an open door, will not in itself render the entry unlawful.

But though forcible entry is in the first instance unlawful, if the distrainor, having effected a proper legal entrance—not, *e.g.*, merely getting between the door and the lintel to prevent its being shut—should be forcibly ejected, or having temporarily absented

himself for some necessary purpose is refused re-admission, he may then justify the breaking open of a door or window in order to effect his re-entry.

Abandonment of possession : “ *Walking Possession*.”—The distrainor must not, in the case above put, quit possession in such a manner as to amount to an abandonment of it, otherwise he can only obtain re-admission in the ordinary way. For instance, if he is away for a long time, he may be taken to have abandoned possession.

In this connection it may be useful to refer to some recent cases on the subject of what is called “walking possession,” that is to say, where for the convenience of the tenant the bailiff goes out of possession, under an authority by the tenant to re-enter at any time.

The question has been discussed as to the right to charge “possession” money where the bailiff goes out under such circumstances, the case of *Lumsden v. Burnett* ((1898) 2 Q.B. 177) deciding, in effect, that, although the statutory charge per diem for “man in possession” cannot be made under the Distress Costs Acts, 1817 and 1827, unless the man has actually been in possession, yet the tenant may validly agree to pay such costs in consideration of the bailiff withdrawing. *Lumsden v. Burnett* was decided with reference to a distress for taxes,

but the same principle would apply in case of a distress for rent.

An authority to re-enter given to a bailiff would be evidence that possession had not been abandoned by him (*ib.*) ; and if the tenant refused him re-admission the bailiff might justify a forcible re-entry.

It has been held, in the case of a sheriff quitting possession, that it is always a question of fact whether possession was abandoned or not (see *Bagshaws Limited v. Deacon*, 1898, 2 Q.B. 173), and it is conceived the same rule applies in the case of a distrainor quitting the premises (see per Smith, L.J., in *Lumsden v. Burnett*, *sup.*).

If it is proved that possession has been abandoned, then a second distress for the same rent is unlawful.

Where a distrainor is entitled to effect a re-entry, if necessary, by forcible means, it may be prudent to require the presence of a constable, if there be any apprehension of violence.

As to the necessity for retaining possession after the goods have been impounded, see *post*, p. 384.

(e) *Impounding the distress*.—The seizure of the goods having been made under the distress, the next thing is to “impound” them. The importance of impounding has been already referred to in connection with the subject of

tender (see *ante*, p. 354). It will be explained here in some detail.

To impound is nothing more than to put in a place of safety, and inasmuch as a distress was originally considered merely as a pledge to be held by the landlord until the rent was paid—as he could not use the goods, but was obliged to return them in the same state as when he distrained them—he was by the common law bound to put them in some place where they might be protected from loss or injury.

Such a place was called a pound, and was either *overt*, *i.e.*, open and public, or *covert*, *i.e.*, private and protected. Cattle were put in the former and goods in the latter.

Rules as to impounding cattle.—The distrainor is bound to see that the pound, whether a common pound or not, is in a proper condition when the cattle or goods are put there, but is not responsible for their subsequent theft or injury, unless the same be attributable to any neglect or default on his part; and if cattle should be stolen or let loose from the pound the distrainor is even entitled to make another distress for his rent.

With regard to cattle impounded in a pound overt, the owner of them may have access to them for the purpose of tending them, and commits no trespass in so doing. It is important in this connection to observe that any person impounding cattle is bound under a

penalty of twenty shillings to supply them with proper food and water—and, moreover, any person is at liberty to supply food and water to any cattle impounded for more than twelve hours without a proper food supply, at the expense of the owner, to be paid before they are removed (12 and 13 Vict., c. 92, ss. 5, 6).

When the person impounding the cattle supplies them with food and water he may recover an amount not exceeding double the value of such food and water from the owner; or, at his option, he may, after seven clear days from the time of impounding, and after giving three days' public printed notice, sell the cattle, or such of them as may be necessary, openly at any public market, and apply the proceeds in discharge of the amount of the value of the food and water supplied and the expenses of the sale (17 and 18 Vict., s. 1). Only the person impounding the cattle can sell. Other persons who supply food can only recover the expense from the owner of the cattle. They cannot recover the cost from the pound-keeper, who is not bound to supply food.*

If the cattle are impounded in an open

* A pound keeper is not liable for receiving a distress, though it was illegal, being bound to receive anything offered to his custody, nor has he any action against any one for breaking pound, the liability and right in each case being the distrainer's.

public pound no notice of the impounding to the owner is necessary, but notice must be given if it is in a private or special pound.

Cattle distrained may not be driven out of the district where they were seized, except to a pound in the same county, and within three miles, otherwise a substantial penalty is incurred under 1 and 2 Ph. and M., c. 12, s. 1. They may be impounded in an open field on the demised premises, the gate being properly secured.

Impounding the distress on the premises.—It is now more usual to impound the distress on the premises where it is taken. Any kind of distress may, by virtue of 11 Geo. II., c. 19, s. 10, be impounded on any convenient part of the premises and may be appraised and sold there, and any person may go to and from such premises in order to view and buy and also to remove the same on account of the purchaser thereof.

Corn loose or in the straw, which, as we have seen, may be distrained by 2 W. and M., sess. 1, c. 5, s. 3 (*ante*, p. 335), must not be removed from the premises, nor growing corn, etc., distrained under 11 Geo. II., c. 19, s. 8, unless there is no proper place on the demised premises in which to store them.

What amounts to impounding on the premises.—Questions sometimes arise as to what con-

stitutes an impounding on the premises. The point is of importance in connection with the time when a tender is made (see *ante*, p. 354).

No formal act of impounding appears to be necessary ; but it must be shown that the goods are seized and secured or held as a distress (Bullen on Distress, 2nd ed., p. 278).

It would seem to be sufficient if the landlord or his agent give the tenant notice that he has impounded the goods on the premises, or that he has impounded them and left them on the premises, or, even if he serves the tenant with a notice of the distress referring to an inventory made from a list of goods given him by the tenant, such inventory being also handed to the tenant.

Where goods are impounded on the premises the landlord may lock up one or two rooms, if necessary, to secure the distress, but must not lock up the whole of the premises, so as to exclude the tenant, without the latter's consent.

Use of impounded goods by distrainor.—The distrainor holds the goods impounded merely as a pledge, and therefore he must not use or work them, or he will be liable to an action by the owner, who could also justify breaking pound in order to retake his property. But milch kine may be milked by the distrainor.

(f) *Notice of distress and time for sale.*—After impounding the distress the landlord may

sell it* ; but he must first give the tenant notice of the distress, and allow five days (or on the written request of the tenant or owner of the goods fifteen days—Law of Distress Amendment Act, 1888, s. 6) to elapse from the time of such distress and notice before he can do so, unless the tenant or owner consent to his selling before.

With regard to the notice of distress, it should preferably be served personally ; or it may be left on the premises. It should state what goods have been taken, and the amount of the rent in arrear. It is irregular to sell without notice, but the notice need not be very exact, and even the omission to give notice or any irregularity in it will not avoid the distress.

If the goods have been removed from the premises, the tenant must be notified of the place where they are deposited.

At the expiration of the five or fifteen days, as the case may be, the landlord may sell the goods to satisfy the rent and expenses of the distress and sale, any surplus belonging to the owner. Formerly the goods had to be appraised by two valuers before sale, but this is now no longer necessary, except in case of growing crops (see 11 Geo. II., c. 19, s. 8), unless on the written request of the tenant

* In the case of corn and growing crops it is said the landlord *must* sell the distress (see Bullen on Distress, 2nd ed., pp. 185-6). Otherwise, he is not bound to sell at all, but *may* hold the distress as a pledge.

or owner of the goods (Law of Distress Amendment Act, 1888, s. 3). (See *post*, p. 380).

The five or fifteen days are fixed in order to give the tenant the opportunity of replevying the goods (as to replevin, see *post*, section 12 (c)).

They must be reckoned exclusively both of the day of the distress and the day of the sale. If the goods are sold before the proper time, still no action lies unless actual damage be proved.

The goods should be removed at the expiration of the five or fifteen days, or within a reasonable time thereafter, otherwise the landlord may be regarded as a trespasser. To avoid this the landlord usually gets from the tenant a consent or "holding over order," authorising him to keep the goods there beyond the five or fifteen days, which may also benefit the tenant by preventing a forced sale.

Standing corn and growing crops may not be sold before ripe, but no action lies for selling them prematurely, unless actual damage be proved.

Appraisement.—In cases where appraisement is allowable the appraisers need not be sworn, nor necessarily professional men, but should be reasonably competent. The distrainer cannot himself appraise the goods, being an interested party. The appraisement is usually

written on the inventory of the goods distrained and signed by the appraisers.

Where an appraisement is required by the tenant or owner of the goods, he has to pay the expense, and where, in pursuance of his written request, the goods must be removed for the purpose of sale to a public auction room, or other specified place, he must bear the expense of such removal, and also any damage to the goods arising therefrom (Law of Distress Amendment Act, 1888, s. 5).

As to the scale of stamp duties payable on appraisements, see *post*, Appendix.

(g) *Mode of sale*.—Before selling the goods it will be prudent to ascertain by a search at the office of the County Court Registrar whether the goods have been replevied (as to this see *post*, sec. 12 (c)). If they have not, the goods may then be sold either by public auction, or otherwise, for the best price that can be obtained. The landlord must not buy them himself, even at the appraised price.

If the distress is for less than £20, and the goods are to be sold by auction, the person selling need not have an auctioneer's license.

In case where the tenant has by his lease covenanted not to remove hay or straw from the premises, the distrainer is not entitled to sell it too cheap on condition that the purchaser consumes it on the premises.

If the tenant is party to an arrangement by

which the purchaser under a distress is to be at liberty to keep the goods on the premises for a certain time, and to enter and remove them, such license cannot be revoked by the tenant. But a mere assent by the tenant to the goods purchased being left on the premises does not in law imply any such license to the purchaser to enter on the premises.

Where a bailiff's authority to sell is withdrawn after he has seized the goods, he may not proceed to sell merely for his expenses.

As to surplus.—Any surplus, after satisfying all proper claims of the landlord, must in strictness be left with the sheriff or constable, and where more goods have been removed than it has been found necessary to sell, the surplus goods should be returned to the demised premises ; and the surplus money (if any) left with the constable. An action lies at the suit of the tenant for any damage sustained through the surplus money not being left for him.*

(h) *Deficiency in sale : second distress.*—In case of a deficiency in the sale the distrainor may make a second distress ; or he may sue for the balance of the rent due. But he

* The presence of the sheriff or constable at the appraisal and sale was prescribed by 2 and 3 W. and M., sess. 1, c. 5 ; but it is now usual to pay over the surplus to the tenant or owner of the goods, in which case the tenant or owner would have only a nominal claim for damages.

may not pursue the latter remedy until after the sale under the distress has taken place.

And it seems that, where the distrainer might, in the first instance, have distrained sufficient goods, he cannot justify a second distress for the same rent.

If the distrainer merely mistakes the value of the goods he has seized, as in case of articles of uncertain value, he may make a further seizure; and where he has, at the tenant's request, withdrawn the distress, or where he has been forcibly prevented by the tenant from selling, he may seize again—such second seizure being really a continuance of the original distress.

(i) *Costs of distress.*—The charges which may be made against the tenant in respect of the costs of a distress are now in effect regulated by the Law of Distress Amendment Act, 1888, and the Rules made thereunder. These prescribe two scales of fees—one applicable where the sum demanded and due exceeds £20, and the other where it does not exceed £20 (see Distress for Rent Rules, 1888, rr. 15 and 16).

The scales will be found set out in full in the Appendix, *post*.

It seems that the bailiff and not the landlord is entitled to the percentages for levying, unless the landlord levies personally (see *Phillips v. Rees* (1890), 24 Q.B.D. 17). The statutory charge for “man in possession” cannot be

made unless there is actual possession, merely constructive or "walking possession" is not sufficient (*Lumsden v. Burnett*, 1898, 2 Q.B. 177).

Rule 18 of the Distress for Rent Rules, 1888, requires a bailiff on the request of the tenant to produce to him a copy of the scale of fees payable under these rules; so that the tenant may know exactly what the bailiff is entitled to charge. Moreover, as the bailiff is liable at any time to have his certificate cancelled by the County Court Judge, this acts as a deterrent against extortion on his part.

It is conceived that the Distress (Costs) Act, 1817, and the scales of charges authorised thereunder, though not expressly repealed by the Distress for Rent Rules, 1888, and the scales thereby authorised, must be read by the light of the later legislation, and, so far as inconsistent therewith, must be deemed to be *pro tanto* replaced by it. See, however, the reservation in s. 7 of the Law of Distress Amendment Act, 1888.

8.—*Rescue and Pound Breach.*

There are two offences in connection with the wrongful taking of the goods distrained out of the custody of the distrainor. If the tenant or any other person take them before they have been impounded, such taking amounts to what is called "*Rescue*." If the goods have been impounded it is "*Pound Breach*."

The former may be justified if the goods have been illegally distrained ; but the latter cannot, under any circumstance, because, after impounding, the goods are in the custody of the law.

If, however, the distrainor himself improperly removes the distress from the pound for the purpose of using it, the owner may, if he can, get possession of it from the distrainor without incurring liability for rescue or pound breach.

A statutory remedy is provided for the person aggrieved by a rescue or pound breach, in the shape of a special action in which he may recover treble damages and costs against the offender or the owner of the goods if they are proved to have come into his use or possession (2 W. and M., sess. 1, c. 5, s. 4). Treble costs, though given by this Act, are no longer recoverable (5 and 6 Vict., c. 97). In this action it is not necessary for the landlord to allege or prove that he has suffered any special damage (*Kemp v. Christmas*, 79 L.T. Rep. 233).

The question has been recently raised whether an action for pound breach lies where the bailiff after impounding the goods on the demised premises has gone out of possession, and during his absence, the goods have been removed by the owner.

It was decided in *Jones v. Biernstein* (1900, 1 Q.B. 100), that, after impounding, the goods being *in custodia legis*, it was unnecessary

for the distrainor to retain possession, and therefore a removal of the goods by the owner during the temporary absence of the man in possession amounted to a pound breach.

9.—*Distress Damage Feasant.*

This subject is not directly concerned with the relation of landlord and tenant, though some of its incidents are common to both kinds of distress (see a useful note in Woodfall, L. and T., 16th ed., pp. 526-7).

10.—*The Landlord's Remedy for Rent where the Tenant's Goods have been taken in Execution.*

(a) *In case of Execution in the High Court.*

We have already seen (*ante*, p. 346) that goods which have been taken in execution, being in the custody of the law, cannot be distrained. In such a case, however, the landlord has a special remedy in the shape of a first charge, as it were, upon the proceeds of the execution to the extent of a year's arrears of rent. By the Statute 8 Anne, c. 14, s. 1, no goods of a tenant taken in execution may be removed from the demised premises unless the rent due, not exceeding one year's arrears, be first paid to the landlord or his bailiff.

Upon such payment being made to the landlord the sheriff is to levy and pay to the execution creditor the money so paid to the landlord in addition to the judgment debt.

The Act applies to all goods on the premises, whether the tenant's or not, and whether or not liable to distress, and to any kind of execution.

But the goods must be actually removed; the execution of a bill of sale by the sheriff to a purchaser does not amount to a removal.

Again, the tenancy must be a subsisting one; and the rent must have been actually due at the time when the goods were taken in execution (*In re Davis*, 55 L.J. Q.B. 217).

A ground landlord is not a "landlord" within the meaning of the Act, but the case of a lessee and his under-tenant is within its operation.

It is doubtful whether the landlord must give notice to the sheriff of the rent being due, and it has been held to be sufficient if the sheriff knows that it is in fact due. No notice need be given by the landlord to the execution creditor.

Position of sheriff.—If the goods are removed contrary to the Act, the sheriff is personally liable to an action, or a summary application may be made to the Division of the High Court out of which the execution issued, to order the sheriff to pay the landlord the arrears allowable and the costs of the application.

The liability in such a case is on the sheriff and not the execution creditor. The measure

of damages in an action against the sheriff would be the amount of the rent due, but it is open to the sheriff to prove that the value of the goods removed was less than the amount of rent due (*Thomas v. Mirehouse*, 19 Q.B.D. 563).

As to the position of the sheriff towards the execution creditor, see Bullen on Distress, 2nd ed., pp. 165-6. As to the duty of the sheriff in case of notice of the tenant's bankruptcy before he receives notice of the landlord's claim for rent, see *re Mackenzie*, 1899, 2 Q.B. 566.

Where goods have been sold by the sheriff to a purchaser, the latter must take them away within a reasonable time or they may become liable to distress for rent accrued since they were taken in execution.

Where an execution is waived the landlord's full right of distress revives.

Limit to landlord's claim in case of small tenancies.—Where a tenement is let at a weekly rent the landlord's claim against goods of the tenant seized in execution is limited to four weeks' arrears of rent; and where such tenement is let for any other term less than a year his claim is limited to the arrears of rent accruing during four such terms or times of payment (7 and 8 Vict., c. 96, s. 67).

(b) *In case of Execution in the County Court.*

Where goods are seized under County Court process the only remedy of the landlord is under s. 160 of the County Courts Act, 1888—the Statute of Anne not applying to County Court executions. By s. 160 the landlord may claim the rent at any time within five days from the taking in execution, or before removal of the goods, by giving the County Court bailiff written notice signed by himself or his agent, stating the amount of arrears of rent and the time for which it is due, and the bailiff shall thereupon distrain for the rent and costs of such distress, and shall not within five days from the distress sell any of the goods taken unless of a perishable nature, or upon the request in writing of the party whose goods were taken; and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy, first, the costs of the sale, next the landlord's claim, not exceeding four weeks' rent, where the tenement is let by the week, the rent of two terms of payment where the tenement is let for any other term less than a year, and the rent of one year in any other case, and lastly the amount for which the warrant of execution was issued.

The overplus, if any, of the sale and the residue of the goods shall be returned to the defendant, and the poundage of the high bailiff

and broker for keeping possession, appraisement and sale under such distress shall be the same as would have been payable if the distress had been an execution of the Court, and no other fees shall be demanded or taken in respect thereof (*ib.*).

Under this Act the County Court bailiff, in levying an execution upon the tenant, is not entitled to take and sell the goods of a stranger on the premises: and, if he does, the owner of the goods may at any time protect his goods by removing them. But he may distrain on a third party's goods for the landlord where he (the bailiff) is lawfully in possession of such goods on the demised premises under an execution (see *Hughes v. Smallwood*, 1890, 25 Q.B.D. 306).

A distress under this Act is separate from the execution, and the bailiff is entitled to separate poundage and possession fees in respect of each proceeding (see *re Broster*, 1897, 2 Q.B. 429).

(c) *In case of Execution in the Admiralty Court.*

In the case of goods seized under process of the Admiralty Division of the High Court there is a special procedure for the satisfaction of arrears of rent due to a landlord prescribed by the Admiralty Court Act, 1861, s. 16.

II. —*Charge on Proceeds of Distress in case of Bankruptcy, etc., of Tenant.*

Where a tenant distrained upon is bankrupt, or becomes so, or dies insolvent within three months, or if a company is in liquidation, or becomes so within three months, those debts which would have a preferential claim to be paid in full or, so far as the assets extend, in priority to any other claims in the bankruptcy administration or winding up, are made a first charge on the goods distrained or the proceeds thereof.

But the landlord is entitled to stand in the shoes of those persons whose preferential claims he has thus satisfied (Preferential Payments in Bankruptcy Act, 1888, s. 1, sub-ss. 2-6)

The preferential claims referred to are rates and taxes and wages of clerks and workmen to the extent therein referred to (*ib.*, s. 1, sub-s. (1)), and in the case of a person dying insolvent the payment of his general and testamentary expenses will take precedence even of these (*ib.*, s. 2, and Bankruptcy Act, 1883, s. 125, sub-s 7).

It seems that this charge cannot be enforced against the landlord by any of these preferential creditors, but only by the trustee, official receiver in bankruptcy or the administrator in case of a deceased insolvent, or by the liquidator of a company in liquidation.

12.—*Wrongful Distress and the Remedies of the Tenant in respect thereof.*

Distinction between illegal and irregular distress.—A distress may, as we have seen, be either illegal or irregular. An *illegal* distress is committed where there was no right to distrain at all, or the levy was in the first instance wrongfully made, *e.g.*, at the wrong time or place, or where privileged goods were distrained.

An *irregular* distress would take place where, though the distress itself was lawful, the mode of carrying it out subsequent to the seizure was improper, or it may be excessive, as where more goods were seized than was necessary.

Importance of distinction.—The importance of the distinction lies in this, that different persons may be liable to the tenant. If the distress was illegal the person actually committing the illegal act can alone be proceeded against, and not the landlord who employed him, unless the latter authorised or ratified the illegality.

Remedies.—The following remedies for wrongful distress are open to the tenant : (a) action for damages, (b) summary procedure, (c) replevin.

(a) *Action for Damages.*

The measure of damages in an action for illegal distress is the full value of the goods distrained, and any damage sustained by the

tenant; if the landlord has withdrawn on payment of rent and costs, it seems the tenant can only recover the actual damage sustained.

An action of trover would also lie against the purchaser or other person who has possession of the goods.

In the case of an irregular distress the landlord would be liable for the acts of his bailiff, but the damages would be limited to the special loss sustained, and moreover a tender of amends by the distrainer, or his agent, before action brought would be a bar to such action. There is this difference between an irregular and an excessive distress, that in case of the latter the tenant would be entitled to some damages whether he has suffered actual loss or not; but for an irregular distress he must show actual damage.

Action for double value.—In the particular case of an illegal distress where no rent was due to the person by or on whose behalf it was levied, and the goods have been sold, the owner may recover double their value.

Injunction.—We have already seen that a distress may in some cases be restrained by injunction (see *ante*, p. 356).

(b) *Summary Proceedings for Wrongful Distress.*

(i.) *Under the Agricultural Holdings Act, 1883, in case of holdings to which that Act applies.*—By s. 46 of this Act, where any dis-

pute arises as to a distress having been levied contrary to the Act, or as to ownership of live stock distrained, or the price of feeding, such dispute may be heard and determined either by a County Court or a court of summary jurisdiction, and either of such courts may make an order for the restoration of any live stock or things unlawfully distrained, or may declare the price of feeding, or may make any other order which justice requires.

An appeal lies from an order of a court of summary jurisdiction, but it is doubtful whether there is any appeal where the parties go to a County Court. Where the latter court is selected the parties may, before the decision of the court is pronounced, agree in writing signed by themselves, their solicitor or agents, that such decision shall be final (County Courts Act, 1888, s. 123). No stamp is required on any such agreement.

Either landlord or tenant, or any other party may avail themselves of this remedy, which is optional to them, and supplementary to any other remedies.

(ii.) *Summary Procedure in the Metropolis.*—The Metropolitan Police Courts Act, 1839, provides a summary remedy for wrongful distresses within the metropolitan police district.

By s. 39 the occupier of any house or lodging on a weekly or monthly tenancy,

or where the rent does not exceed £15 per annum, may summon before a magistrate any person whom he charges with taking away his goods by an unlawful distress, or with an irregular or excessive distress; and the magistrate, if satisfied that the complaint is well founded, may order the distress to be returned to the tenant on payment, at such time as he shall appoint, of the rent which shall appear to be due, or if the distress has been sold, he may order payment to the tenant of the value thereof after deducting the rent so appearing to be due, the value to be determined by the magistrate, and in default of compliance with such order, the landlord or the party complained against shall forfeit to the party aggrieved the value of the distress, not exceeding £15, such value to be determined by the magistrate.

The amount of the rent is immaterial in case of weekly or monthly tenancies, but in all other cases must not exceed £15 per annum.

This summary remedy is optional with the tenant, who may, if he prefers it, proceed by action.

(c) *Replevin*.

Replevin is a very ancient procedure, by which a tenant whose goods have been illegally distrained may recover possession of them.

It is a remedy available only where there has

been an *illegal*, as distinguished from an *irregular* or *excessive* distress.

It is a proceeding rarely resorted to at the present day, the action for damages being found to be more satisfactory.

The gist of the proceedings is that the tenant whose goods have been illegally distrained may get back possession of them at once, on giving security, to try the validity of the distress in an action of replevin to be forthwith commenced by him against the distrainer, and prosecuted successfully and without delay, either in the High Court or County Court, at the option of the owner of the goods, and to restore them if ordered so to do.

Procedure in replevin.—The process is shortly as follows: The tenant gives before the Registrar of the County Court of the district where the goods have been taken a security, to be approved by the Registrar, to an amount sufficient to cover the rent and costs of the subsequent replevin action.

The condition of the security is that the tenant shall commence the replevin action in the County Court of the district within one month from the date of the security, or in the High Court within a week.

If he intends to bring his action in the High Court, he must further undertake by his security to prove before the High Court, unless he obtains judgment by default, that he had

ground for believing either that the alleged rent or the value of the goods seized exceeded £20, or that the title to some corporeal or incorporeal hereditament of the value of more than £20 per annum, or to some toll market, fair or franchise, was in question.

On giving such security to the satisfaction of the Registrar, the latter is empowered to order the goods distrained to be replevied or redelivered to the tenant, who must thereupon commence his replevin action (see County Courts Act, 1888, ss. 134-136).

The tenant is here called the replevisor, and the security is a bond—called a replevin bond—with sureties given to the other intended party to the replevin action.

Or the replevisor may deposit with the Registrar, or with a master of the High Court, a sum equal to the amount of the security, together with a memorandum setting forth the conditions of the security.

As the bond binds the replevisor not only to commence the replevin action, but also to prosecute it to a successful issue, it is obvious that only in the very clearest cases will it be prudent for the tenant to proceed in this form of action for illegal distress, and for this reason, probably; replevin is now to a great extent obsolete.

The replevin action, whether in the County Court or the High Court, will proceed like

any ordinary action, the plaintiff's claim being "in replevin for goods wrongfully distrained."

See further as to replevin, Woodfall, L. and T., 16th ed., 538-556 ; Annual County Courts Practice, 1900, Vol. I., pp. 441-446 : and for Forms of Replevin Bonds (*ib.*), pp. 945, 946 ; Forms 244, 245.

CHAPTER VII.

THE RELATIVE RIGHTS AND DUTIES OF LANDLORD AND TENANT APART FROM EX- PRESS CONTRACT.

(I) *Rights and Duties of Landlord and Tenant inter se.*

We have already seen in what cases covenants are implied by law on the part of lessor and lessee (see *ante*, pp. 115-129). There are besides several obligations of a miscellaneous character arising between landlord and tenant, which it may be convenient to discuss in this place.

(a) *Boundaries, Fences and Party Walls.*

Boundaries.—There is an implied agreement on the part of a tenant to preserve the proper boundaries of the land demised and not to remove walls, fences, etc., which might confuse the landlord's property with his own. And if the tenant does not keep the boundaries distinct, the landlord may bring an action, even during the term, to have them ascertained; and if they cannot be distinguished the tenant will be obliged to substitute land of equivalent value.

If any encroachments are made by the tenant it is presumed they are made for the landlord's benefit, unless there be evidence to the contrary, *e.g.*, that the tenant took possession of the property encroached on against the landlord's wish, or that the encroachment is not occupied as one with the demised property. The occupation may be all one, though the encroachment is on the other side of the highway, or separated from the demised land by a brook, fordable by cattle in dry weather (see *Andrews v. Hailes*, 2 E. and B., 349 ; *Earl of Lisburne v. Davies*, L.R. 1 C.P. 259).

In the recent case of *Lord Hastings v. Saddler* (79 L. T. Rep. 355), it was held that the mere fact of a tenant occupying other land belonging to his landlord did not of itself raise any presumption that he occupied it as tenant to such landlord ; that the presumption as to all encroachments being for the benefit of the landlord, only arose with regard to encroachments on waste land adjoining, or at any rate adjacent, to the land demised, and was not a presumption which the Court would be inclined to extend. Therefore, a tenant who has occupied other land belonging to his landlord, without anything to raise a presumption of tenancy thereof, may by twelve years' uninterrupted possession acquire a title to it under the Statutes of Limitation.

Fences.—The implied obligation on a

tenant's part to use a farm in a husband-like manner (see *ante*, p. 128) includes the duty of upholding the fences. To enable him to do this he is entitled to reasonable estovers or hedge-bote—*i.e.*, wood necessary for repairing hedges or fences, and may therefore cut timber to keep the walls, pales, fences, hedges and ditches as he found them.*

Hedges between adjoining properties.—The difficulty sometimes is to ascertain to which of the two adjoining owners a hedge belongs, and on this depends the tenant's liability under an obligation of this kind. The general rule of law is that the hedge between two fields *prima facie* belongs to the owner of the field in which the ditch is not, as the ditch and not the hedge marks the limit of adjoining estates (see 2 Selwyn's *Nisi Prius*, 1244). When there are two ditches, one on each side of the hedge, the ownership of the hedge must be determined by proving acts of ownership (*ib.*).

Adjoining occupiers are not by the common law bound to fence either against or for the benefit of each other; it is sufficient if each prevents his cattle or other animals from trespassing on his neighbour's land; but there may

* Sometimes this obligation is embodied in an express covenant, of which the following is a concise form—"And also will at all times during the said term keep all the hedges and fences in good condition, and will yearly at the proper season clip such of the hedges as have usually been clipped."

be an obligation to fence arising under some statute, or by prescription or agreement. So a landlord is not by law bound as between himself and his tenants to maintain his fences in order to prevent his tenants' cattle from straying into the landlord's adjoining property (*Erskine v. Adeane*, L.R. 8 Ch. 756).

Duty to fence in case of yearly tenancy.—It is not altogether clear whether the implied obligation on the part of a tenant to maintain fences is one to which a *yearly tenant* is subject, notwithstanding the very wide terms in which the rule is stated by Lord Kenyon in *Cheetham v. Hampson* (1791, 4 T.R. 318), viz.—“It is so notoriously the duty of the actual occupier to repair the fences and so little the duty of the landlord, that, without any agreement to that effect, the landlord may maintain an action against his tenant for not so doing on the ground of the injury to the inheritance.” If this principle is meant to apply to yearly tenancies it is not easy to reconcile it with the generally accepted rule that a tenant from year to year is not liable for mere permissive waste (see *ante*, p. 128).

It may, however, be observed that *Cheetham v. Hampson* was an action by a stranger against the landlord, and that the rule stated by Lord Kenyon was merely an *obiter dictum*; and, moreover, it does not appear from the case what interest the tenant had. It may be that

in the case of a farm the implied obligation as to the repair of fences is more extensive than under an ordinary occupation lease. The point can only be considered doubtful, as indeed is the extent of a yearly tenant's implied obligation with regard to repairs generally (see as to this *ante*, pp. 127-8).

But a yearly tenant must not commit waste, *i.e.*, actively do anything to injure the fences, or anything amounting to a breach of the rules of good husbandry. Therefore, he must not cut and sell hedgerows unless he makes them up properly. It is commissive waste to stub up or suffer to be destroyed a quickset hedge of white thorn, but it is not waste to cut such hedges, because it improves their growth and is therefore good farming.

Party walls.—A party wall belongs properly to the land on which it stands, and if it stands equally on the land of the adjoining owners, and is built at their joint expense, each is owner of that half which is on his own land, the wall being in effect considered as two distinct walls. It would follow from this that the obligation of the tenant to repair would be confined to that half which belongs to the land occupied by him.

If adjoining owners simply have the use in common of a party wall, there being nothing known as to its origin, *prima facie* they are tenants in common of it, and as such neither is

under any obligation to the other to do repairs to it (see *Leigh v. Dickeson* (1885), 15 Q.B.D. 60) ; but as between either tenant in common* and his tenant, the obligation on the part of the latter to do necessary repairs to the demised premises would seem to extend to the whole wall in the absence of express stipulation to the contrary. But the subject is one of great uncertainty, and there is but little authority to be found.

As to the liabilities of landlord and tenant with regard to the rebuilding or repair of party walls in the metropolis, see the London Building Act, 1894, and the London Building Act, 1894 (Amendment) Act, 1898, and see *Hunt v. Harris* (34, L.J. C.P. 249) ; and Glen and Bethune's London Building Act, 1894.

(b) *Trees and Timber.*

In the absence of express covenant by the tenant as to trees and woods, his rights and liabilities with respect to their preservation, cutting, etc., depend upon the old common law rules determining the ownership of them as between landlord and tenant.

* "Tenant in common" is the technically correct description of the person popularly called an "owner in common" of land—there being theoretically no "ownership," but at most a "holding" of land in this country—and the word "tenant" in this phrase must be distinguished from the same word as used in the text to signify a person holding under a lease.

What is "timber."—In this respect a wide distinction must be made between trees which are *timber*, and hedges, bushes and trees which are not timber. It seems that timber trees are those which are mainly used in building or repairing houses. Oak, ash and elm of twenty years' growth, if not too old to have a reasonable quantity of usable wood in them—*e.g.*, sufficient to make a good post—are everywhere timber; but other trees are so considered by local custom in various districts.

Thus *beech* is timber by the custom of Bucks (*Dashwood v. Magniac* (1891), 3 Ch. 306), and also in Gloucestershire, Bedfordshire and Hants; *birch* in Yorkshire, because used there for building sheep houses, cottages, etc.; also in Cumberland; *cherry* and *aspen* in Bucks; *willow* in Hants; and in some places *whitethorn*, *holly*, *blackthorn*, *horse-chestnut*, *lime*, *yew*, *crab*, and *hornbeam*.

Again, in some places, *pollards*, that is, timber trees which have been lopped and are generally considered not to be timber, are also held to come within that category.

Property in timber trees.—Timber trees belong to the landlord, others to the tenant. A general demise of land will include timber trees, unless they are specially excepted. If the timber trees be excepted out of the demise, the tenant's rights in respect of them are limited to the following. He is entitled to

their shade, shelter and fruit, and he may cut down and appropriate trees which are not timber or fruit trees (or left standing for ornament or protection), and which grow up again from their stools or butts.

We have already referred to the tenant's right to cut necessary timber for repairing fences (*ante*, p. 400), but he must not injure the body of the trees. This right extends to timber required for repairing houses and buildings, ditches and husbandry implements. He must, however, use the timber on the demised premises, and may not sell it and spend the money in buying other timber for the purpose.

As to *windfalls*, these, if of sound timber, belong to the landlord; if of dead timber (*dotards*), or of trees not timber, to the tenant (*Herlakendon's Case*, 4 Co. Rep. 62).

Rights as to non-timber trees.—A farmer may not sell young fruit trees which he has raised on the demised land for filling up orchards; but a nurseryman may do so, even though they are producing fruit, provided they are not of larger growth than can be dealt with in the way of his trade.

And an ordinary tenant may not remove bushes, shrubs, flowers, borders, roots, etc., even though planted by himself, except by special agreement with the landlord, and a tenant of a garden may not plough up and

destroy strawberry beds although he has paid the previous tenant for them.

The reason of this rule appears to be that all such additions to the demised premises are regarded as fixtures, and that on the principle that *quidquid plantatur solo solo cedit*, unless they are planted for purposes of trade or agriculture, as in the case of a nurseryman or market gardener, they are irremovable (see *Empson v. Soden* (1833), 4 B. and Adolph. 655). As to *Fixtures* see *post*, Chap. XIII.

If timber be cut by the landlord which he has no right to cut, he may be sued by the tenant for damages for trespass and injury, and *vice versa* the tenant by the landlord for waste. And both landlord and tenant may sue a third person for wrongfully cutting trees, the damages being apportioned between them according to their respective losses.

Covenants as to trees.—Often the tenant expressly covenants with regard to trees:—
“That he will preserve all trees, tellers, pollards and saplings, for the time being standing or growing on the demised premises from bites of cattle or other injury, and will not fell or destroy, or top, lop or prune any such trees, pollards and saplings [under a penalty of £ for every such tree, teller, pollard or sapling, to be paid in addition to the actual amount of damage done as aforesaid, and to be recoverable immediately].

The following points decided on covenants with regard to trees may be referred to.

If a tenant covenant to leave trees in the same plight as he finds them, he must not, of course, cut them down, but would be excused the performance of his covenant if they were blown down by the wind or otherwise destroyed by the act of God. So, under a covenant to yield up the trees in an orchard, "reasonable use and wear only excepted," the tenant would be justified in cutting down trees decayed and past bearing in a crowded part of the orchard, and planting an equivalent number in a less crowded part; but where the covenant is very comprehensive, such as "not to remove, grub or destroy" trees, the tenant may not remove trees from one part of the property to another, or take away live trees, even though he replace them by a larger number.

Rights where trees are excepted from lease.—If the trees are not included in the demise but are reserved to the lessor, this exception will include the boughs and fruit and will give the tenant no interest whatever in the trees, except perhaps the right to any timber which was decayed at the date of the lease, and in such a case the tenant would be guilty of trespass in felling or lopping the trees. The lessor is entitled under a reservation of trees to enter the land at all times to show, sell, cut, and

carry them away, but not to saw them or leave them an unreasonable time.

Again, if the tenant has with the landlord's consent spent money on the faith of the excepted trees not being cut down, the landlord could be restrained by injunction from cutting them down. Where trees are excepted out of a lease the tenant is under no obligation to protect them or their shoots, nor liable to any action if his cattle injures them.

Hedges, bushes, and trees which are not timber trees are, unless excepted from the lease, the property of the tenant; but he may not exercise his rights over hedges to the extent of grubbing up or destroying them, otherwise he may be guilty of waste. The tenant is entitled to cut *underwood* at the customary periods, but not at other times.

(c) *Fixtures.*

As to the relative rights of landlord and tenant with regard to fixtures, see *post*, Chap. XIII.

(d) *Rights as to Game and Sporting.*

The right to take and kill game on land belongs to the owner of the land for the time being, and by a lease such right passes to the tenant unless expressly excepted. The right may either be reserved to the lessor, as is usually the case in agricultural leases, or granted to a third person, and entitles the

grantee to sport either by himself or his servants. If the right of sporting over the land demised be granted to the lessee in common with the lessor, or any friend of the latter, this has been held to entitle the lessor to take any number of friends.

Under an agreement by the tenant not to destroy but to preserve the game on the demised property, neither landlord nor tenant can sport over it during the term of the lease (*Coleman v. Bathurst*, L.R. 6 Q.B. 316).

Covenant to keep up game.—Sporting leases usually contain a covenant to keep up a stock of game—*e.g.*, the tenant “will at the expiration or sooner determination of the said term leave upon the demised premises a breeding stock of game and hares not less than that now existing thereon.”

Such covenant is one which runs with the land, *i.e.*, the benefit and the burden of it pass to the assignee for the time being of the reversion and the term respectively in the land over which the sporting rights were granted.

Improper exercise of sporting rights.—The person having a right of sporting over land must exercise it in a reasonable manner, that is, he must not trample crops at an unusual or unreasonable time, nor turn on to the land game which has been bred elsewhere so as to injure the crops. And where land is let to a tenant reserving the right of shooting over it,

the tenant may bring an action against the persons having shooting rights for overstocking the land with game so as to cause damage to the tenant's crops (*Farrer v. Nelson*, 15 Q.B.D. 258).

Damage to tenant's crops by game.—Where the game rights are reserved to the landlord a tenant is not entitled to any compensation from him for damage to his crops by game, unless there be a special agreement in that behalf, which, however, need not be in the lease, but may be collateral to it. Thus in *Erskine v. Adeane* (L.R. 8 Ch. App. 756), a farmer being in treaty for the lease of a farm declined to take it on account of the quantity of game. The lessor promised that he would kill down the game and would not let the shooting, but refused to allow the promise to be inserted in the lease. The lease was therefore executed by the tenant, in which the right to kill game was reserved to the landlord, his friends, and servants. The lessor afterwards let the shooting and did not kill down the game. It was held that there was a binding agreement to kill down the game, and that the tenant was entitled to compensation for the damage done by them to the crops.

Tenant's remedy for damage by ground game.—In the case of ground game the tenant has his remedy in case of depredations committed by them under the Ground Game Act, 1880, viz., to

capture and destroy them; but no other remedy except by special agreement.

Effect of reservation of shooting rights.—The reservation of shooting rights does not prevent the tenant destroying furze and underwood, provided he does not wilfully drive the game away; and so he may cut down trees in the ordinary course of management, even though it may affect the shooting.

Fox-hunting.—It may be convenient here to refer to a question which has frequently given rise to disputes and litigation, viz., the right of persons fox-hunting to enter on any land. The law is clear that no land can be hunted over without the consent of the owner, or, where the land is let, of the tenant, and a person may not trespass even if he is in fresh pursuit of a fox (see *Paul v. Summerhays*, 4 Q.B.D. 9). The tenant would have an action of trespass. But it is doubtful whether, if the destruction of a fox as a noxious animal be the only object of entering on another person's land, a trespass might not be justified.

It was so held in the case of *Gundry v. Feltham* (1 T.R. 334), where it was contended that hunting the fox was the only means of destroying the animal, and on that ground the trespass was held to be justifiable. But, the destruction of the fox as a noxious animal must be the only object of the pursuit; as,

if the interest and excitement of the chase be the main object, and the killing of the fox only a subordinate one, the trespass would not be excused (see *Lord Essex v. Capel*, cited in *Locke on Game Laws*, p. 45, and per Lord Coleridge in *Paul v. Summerhays*, *sup.*). How far trespassing with a gun after foxes solely in order to destroy them as common pests would be regarded as justifiable must be considered as a point not yet settled.

Effect of reservation of hunting.—Where, as is common, a lease of land reserves to the landlord the right of hunting over it, he would be entitled to allow others to do so besides himself. A reservation of hunting would not extend to shooting feathered game.

Provisions of the Game Act, 1831.—A reservation of game to the landlord may, for the purpose of the Game Act, 1831, be a *verbal* one, provided it actually reserve to the landlord the right of entry in order to take the game, and is not merely an agreement by the tenant not to destroy, but to preserve the game. Section 8 of the Game Act provides that nothing in that Act is to authorise any person holding any land to kill or take game, or to permit any other person to do so upon land, in any case where by lease or agreement, whether written or verbal, a right of entry upon such land for the purpose of killing or taking the game has been reserved by or given to any

landlord or other person whatsoever. Section 11 empowers a landlord who has reserved the right to kill the game to authorise other persons to sport, and (by s. 12) if in such cases the tenant either kills or takes the game himself, or permits any one else to do so without the authority of the landlord or other persons having the game rights, he will be liable to a maximum penalty of £2 for the sporting, and £1 per head for the game killed.*

The Ground Game Act, 1880.—As regards ground game, *i.e.*, hares and rabbits, the law has been very considerably altered by the Ground Game Act, 1880.

Section 1 enacts that any occupier of land is to have as an inseparable incident of his occupation the right to kill and take ground game on the land concurrently with any other person who may be entitled to kill and take ground game on the same land. But this right of the occupier is subject to the following limitations :—

(1) The occupier must take and kill the ground game by himself or some one authorised by him in writing.

(a) The occupier himself and one other person authorised by him in writing shall be the only persons entitled under the Act to kill ground game with *firearms*.

* As to the powers of owners and occupiers of land with regard to the apprehension of game poachers, see Wright's "Law of Landed Estates" (p. 228), published at "The Estates Gazette" Office.

(b) No person may be authorised by the occupier to take and kill ground game except members of his household resident on the land in his occupation, persons in his ordinary service on such land, and any *one other* person *bona fide* employed by him for reward in the taking and destruction of ground game.

(c) Every person so authorised by the occupier, on demand by any person having a concurrent right to take and kill the ground game on the land, or any person authorised by him in writing to make such demand, shall produce to the person so demanding the document by which he is authorised, and in default he shall not be deemed to be an authorised person.

(2) A person shall not be considered an occupier of land for the purposes of the Act by reason of his having rights of common over the land, or by reason of an occupation for the purpose of grazing or pasturage of sheep, cattle or horses for not more than nine months.

(3) In the case of moorlands and uninclosed lands (not being arable land), the occupier and the person authorised by him shall exercise the rights conferred by this section only from December 11 in one year until March 31 in the next year, both inclusive ; but this provision is not to apply to detached portions of moorland or uninclosed lands adjoining arable lands, when such detached portions of moorlands or

uninclosed lands are less than twenty-five acres in extent.

Section 2 provides that where an occupier is entitled otherwise than under the Act to kill and take ground game, if he shall give any other person the right to kill and take such ground game he shall nevertheless retain as an inseparable incident of his occupation the same right to kill and take ground game as under s. 1, and save as aforesaid (but subject to s. 6 which forbids the killing of ground game with firearms at night, and the use of traps or poison) the occupier may exercise any other or more extensive right which he may possess in respect of ground game or other game in the same manner and to the same extent as if the Act had not passed.

Section 3.—Every attempt to divest the occupier of this right whether by agreement, condition or arrangement, or to give the occupier any advantage in consideration of his forbearing to exercise such rights, or to impose on him any disadvantage in consequence of his exercising such rights, shall be void.

Section 5 preserves rights under existing contracts—*i.e.*, contracts in force at the passing of the Act, September 7, 1880—whereby persons other than the occupier have the right to kill and take game, and postpones the rights conferred on the occupier by the Act until the determination of such contract.

The Act does not affect any special right of killing or taking ground game to which any person, other than the landlord, lessor, or occupier, may have become entitled before the passing of the Act by virtue of any franchise, charter, or Act of Parliament (*ib.*).

Cases under this Act.—It was decided in the case of *Morgan v. Jackson* ((1895), 1 Q.B. 885), that the provisions of s. 3, above cited, do not prevent an occupier from making a contract with another person to allow that other to exercise the right which the occupier has by the Act, and that s. 3 only applies to prevent the occupier from surrendering to the landlord the right which is made inalienable by the Act. In other words, s. 3 only applies as between landlord and tenant, and not as between the tenant and a third person. It is doubtful whether under such an agreement the occupier would retain a concurrent right to kill ground game himself. According to Wright, J., in *Morgan v. Jackson* (*sup.*), a tenant having the sole right of shooting—as where there is no reservation or a reservation of game only to the landlord—though he might let it to another person would still, by s. 2, retain his concurrent right to shoot the ground game.

An owner in occupation of land is an “occupier” within s. 1, and therefore entitled to kill the ground game concurrently with any

other person having the same right (*Anderson v. Vicary*, 1899, 2 Q.B. 436).

But s. 6, which forbids the killing of ground game with firearms at night, and the use of traps or poison, does not apply to occupying owners who may kill ground game by any method which an owner could legally have used before the Ground Game Act, 1880 (*Smith v. Hunt*, 54 L.T. Rep. 422).

In the recent case of *Stanton v. Brown* (Jan. 24, 1900, XVI., T.L.R. 157) it was held that an agreement reserving all sporting rights to the landlord, though void as to the ground game, is good as to other sporting rights.

The rating of shooting rights.—Shooting rights are rateable under the Poor Rate Acts when severed from the occupation of the soil. As to this, the Rating Act, 1874, provides that where the right is severed from the occupation of the land and is not let, and the owner of the right receives the rent for the land, the said right shall not be separately valued or rated, but the gross and rateable value of the land shall be estimated as if the said right was not severed; and if the rateable value is increased by reason of its being so estimated, the occupier of the land may deduct from his rent such portion of any poor or other local rate as is paid by him in respect of such increase; and every assessment committee shall

certify in the valuation list or otherwise the fact and amount of such increase (s. 6).

(e) *Fishing Rights.*

An ordinary lease of lands, including water, passes the right of fishing in that water in the absence of contrary stipulation. A lease of a several fishery must be by deed; also a license to fish. But if a fishery be let verbally and no rent agreed upon, a reasonable rent or sum for the use and occupation of it may be recovered by the landlord (see *Holford v. Pritchard* (1849), 3 Ex. Rep. 793; Paterson's Fishery Laws, 1st ed., p. 67).*

(2) *Rights and Duties of Landlord as regards Strangers.*

The rights and liabilities of landlords with regard to third parties have to be considered mainly in connection with injuries done to or

* *Landlord's liability to tenant on collateral representations.*—It is convenient to refer here to the liability which a landlord may incur towards his tenant in respect of representations or promises made by him or his agent at or before the time of granting the lease. If the lessor verbally promises to do certain things not specified in the lease, he is not liable to make good his promise unless it either amounts to a warranty or clearly relates to some collateral matter. But if he falsely and fraudulently represents a certain state of things to be the fact—*e.g.*, that the drainage, state of repair, etc., is sound—and the tenant takes the lease on the faith of such representation, he will have an action for damages against the landlord for the deceit. It is well to bear in mind that, except under these circumstances, and in the cases already mentioned (see *ante*, pp. 119-125), a tenant has no remedy against his landlord for defective drainage or want of repairs, nor can he compel him to do anything what-

by such third parties in respect of the demised premises.

So long as the landlord's interest in the premises is reversionary, his rights and liabilities are confined to such injuries as affect the reversion, as distinguished from those which interfere with the occupation and present enjoyment of the premises.

In respect of the latter it is the tenant or occupier who has the right or duty, as the case may be.

When the reversionary interest is itself only of a limited character—*e.g.*, that of a tenant for life or underlessor, he could only recover for an injury to the demised premises such damages as would be equivalent to the actual injury to his own interest.

Damage to reversion.—Using the term reversioner in the sense of the person having the

ever in this respect to the premises. We stated in a former chapter that, if a contract for a lease be induced by fraudulent misrepresentation by, or on behalf of, a landlord, the tenant could get the contract set aside, or resist any action for specific performance thereof brought by the landlord (see *ante*, pp. 281-2).

Representations by Agents.—It frequently happens that an agent instructed to let property makes representations with regard to drainage, repairs, etc., to an intending tenant. In such cases the landlord will be liable to the tenant in an action for damages, either if the agent made the representation fraudulently, though without any instructions from the landlord, but in the ordinary course of his employment and for the benefit of the landlord, or, if the landlord fraudulently instructed the agent to make a representation which the landlord knew, but the agent did not know, to be untrue. In the former case the agent would also be personally liable to the tenant.

reversion in fee simple, it is clear that he has no right of action against a third party, unless he can show some actual or threatened permanent injury to the freehold, *e.g.*, an injury by mining under it (*Backhouse v. Bonomi*, 9 H.L. Cas. 503); or unless it is something in derogation of his title thereto. A permanent obstruction of a way in denial of the right would, for instance, be an act in derogation of the reversioner's title, and therefore an actionable injury to him. Anything which permanently injures or affects the value of the reversion gives a present right of action to the reversioner, although he cannot sue unless he has suffered actual damage (see *Darby and Co. v. Mitchell* (1886), 11 App. Ca. 127). But such temporary injuries as nuisances by smoke or noise, which may abate at any moment, are not actionable at the suit of the landlord. The reversioner may, however, sue for a permanent nuisance, or one affecting any easement or right to the property, in which action it seems the measure of damages will be, not the diminution in the value of the reversion, but what is reasonably sufficient to compel the abatement of the nuisance.

As to what constitutes a sufficiently permanent nuisance to the reversioner to entitle him to sue as such, see the case of *Mayfair Property Co. v. Johnston* (1894), 1 Ch., at pp. 516, 519, where the authorities are reviewed by North, J.)

Joint Reversioners.

Any one of several reversioners who are tenants in common may sue in respect of his interest as such for an injury to their common reversion, without joining the others as co-plaintiffs; but, if the reversion is severed, he may not join them without their written consent (R.S.C. O. XVI. r. 11).

As to joint tenants, each of these has in contemplation of law the whole as well as an undivided part vested in him, and can therefore sue alone for injury to the reversion. As trustees are always joint tenants* this rule is important to note where they are landlords, and there may be a difficulty in getting them to take joint action in respect of injury to the trust property.

There is nothing to prevent both lessor and lessee suing at the same time, either in one action or separately, in respect of injury to the premises, though their interests are distinct. Thus, in the recent case of *Shelfer v. City of London Electric Lighting Company* (1895, 1 Ch.

* The word "tenant," as used in the phrase joint tenant, and tenant in common, does not necessarily mean a tenant in the ordinary sense of the word, but simply a person holding a joint interest, which may be either a freehold or a leasehold interest. As by the theory of our law there is no such thing as ownership of land, but at most the holding of an estate in fee-simple, the technical description of a person usually called a freeholder is a tenant in fee-simple, having the largest estate in land which can be held by any subject; though a tenant in tail and a tenant for life are also technically "freeholders."

287), an electric lighting company erected powerful engines and other works on land near to a house which was let on lease to a publican. Owing to excavations for the foundations of the engines, and to vibration and noise from the working of them, structural injury was caused to the house, and annoyance and discomfort to the lessee. The lessee and the reversioners in separate actions against the company succeeded in obtaining an injunction and damages in respect of the nuisance and structural injury respectively thus occasioned.

Overhanging trees.—Overhanging trees constantly give rise to questions between neighbouring owners, and the rights with regard to them of the person whose land is overhung have been under discussion in the House of Lords. It has now been decided that the proprietor whose land is overhung may cut the overhanging boughs and is not bound to give the owner of the tree notice before doing so; but he must take care not to trespass on the neighbouring land in exercising this right (*Lemmon v. Webb* (1895), App. Ca. 1).

Moreover, he is entitled to cut the boughs so far as they overhang, even though they have done so for more than twenty years (see *Lemmon v. Webb*, *sup.*). The person whose land is overhung is not, however, entitled to cut off boughs before they grow over and so as

to prevent them growing over (*Earl of Lonsdale v. Nelson*, 2 B. and C. 311).

If trees grow over a highway so as to inconvenience passers-by, they may lop off the overhanging boughs provided they cut no more than is necessary, otherwise the person cutting will be liable in damages.

There are the same rights as to cutting roots of trees which encroach on neighbouring land.

As to whether the right to cut overhanging trees is in the landlord or the tenant, where the land overhung is let, it would seem to be in the tenant, as the nuisance is not necessarily of a permanent kind, but rather a trespass interfering with the present enjoyment of the premises (see *post* (3) "Rights and duties of tenant as regards third persons").

Liability of landlord to third person.—The general rule is that the landlord is not liable to third parties for any injury arising from the condition of the demised premises. But to this rule there appear to be the following exceptions, *i.e.*, the landlord may be liable to the third party :

(1) Where he has knowingly let the premises in such a condition as to constitute a nuisance, either to the public or to some person to whom he was under a special duty to prevent such a nuisance arising, *e.g.*, an adjoining owner (see *Lane v. Cox* (1897), 1 Q.B. 415; *Todd v. Flight* (1860), 9 C.B. N.S. 377).

(2) Where he has let the premises for a particular purpose, necessarily or probably involving a nuisance of either of the above kinds (see *Harris v. James* (1876), 45 L.J. Q.B. 545).

(3) Where he has contracted with his tenant to keep the premises in repair (*Payne v. Rogers* (1794), 2 H. Black, 349; *Pretty v. Bickmore* (1873), L.R. 8, C.P. 401); in which case, however, his liability appears also to be limited to the case of defects amounting to a nuisance of either of the above kinds. That is, it would not cover every case of injury to a stranger in connection with the demised premises. *Miller v. Hancock* (1893, 2 Q.B. 177) is sometimes cited in this connection, but it is submitted that that case stands on a different footing altogether. That was an action by a person having business with the tenant of a flat, to which there was access by a common staircase, for an injury arising from the staircase being in a defective condition. The landlord retained possession and control of the staircase, which therefore really formed no part of the demised premises, but the tenant had an easement or right of way over it. It was held that the landlord was liable to the person injured, because, although he had not expressly agreed with the tenants to keep the staircase in repair, yet he must be taken to have impliedly agreed to provide a safe mode of access to the flats

for them, and all persons having lawful business with them, and therefore to be under an obligation to provide safe access to any person properly using the staircase.

The point is suggested whether, in cases where the landlord is liable for the injury, the person injured has the option of suing the tenant, leaving it to the latter to obtain such indemnity from the landlord as he may be entitled to, *e.g.*, where the latter has contracted with the tenant to keep the premises in repair. It would seem that the injured third party can sue both landlord and tenant, or either. See *Harris v. James*, *sup.*, where both were sued, and the landlord unsuccessfully pleaded that the tenant alone was liable.

Where a landlord employs workmen upon the demised premises and superintends repairs executed by them, though the lessee pays for them, the landlord will be liable for any nuisance caused by the workmen.

Liability of reversioner in case of periodic tenancies.—A question has several times arisen as to the liability of the reversioners under the first of the above exceptions, in the case of a yearly or other periodic tenancy. If, as was formerly held, the tenancy were deemed to determine at the end of each year, or other period, without any notice to quit, though the landlord might have given such notice, the continuance of the tenant in possession might

be said to amount to a reletting at the beginning of each year, or other period; and in such case, if there were any nuisance on the premises the landlord might be said to relet the premises with the nuisance on them, so as to bring himself within the first of the three exceptions above mentioned. But it is now settled that a periodic tenancy, no matter whether yearly, monthly, or weekly, requires some notice to determine it; and therefore so long as it continues without any notice being given, it is all one tenancy; and if a nuisance arise during its continuance the landlord will only be liable to third persons under the third exception, *i.e.*, where he has contracted with the tenant to do the repairs (see *Gandy v. Jubber*, 9 B. and S. 15 n; *Bowen v. Anderson* (1894), 1 Q.B. 164).

If the nuisance, though arising during the tenancy, is attributable to some structural defect existing at the time of the original letting, the landlord might, in that case, be liable under the first exception.*

Where a nuisance, *e.g.*, arising from the erection of a building, continues after premises have been let, the landlord will be liable, al-

* To use a house as a brothel is to commit a common nuisance, and now by the Criminal Law Amendment Act, 1885, s. 13, it is an offence punishable on summary conviction for the landlord or his agent to knowingly let premises to be used as a brothel, or to be wilfully a party to their continued use as a brothel.

though he has no right to go upon the premises to abate it.

Where a nuisance is created by the acts of persons who are upon premises merely by permission of the owner, the latter is liable if he is himself in occupation ; but where he has let the premises, it is the tenant or person in possession who will be liable for a nuisance caused by persons on the premises by his leave and license.

The liability of the reversioner for the consequences of a nuisance caused by him cannot be got rid of by assigning the reversion, though the assignee may be sued.

(3) *Rights and Duties of Tenant as regards Strangers.*

Rights of tenant.—Where injury is caused to the demised premises by a stranger, the tenant as the person having the legal possession of the property for the time being is entitled to sue in respect of such injury. His occupation and enjoyment are interfered with. This is so even though the reversioner has also a right of action in respect of the same matter. It is essential that the tenant or occupier should have possession *de jure* or *de facto* to entitle him to maintain an action for trespass to the property. Actual possession, though without title, is good as against a trespasser. But a lessee, though en-

titled to the possession of the demised property by virtue of the lease, cannot maintain trespass against a stranger before he has actually entered into possession, until which time he has what is technically called only an *interesse termini*, though he may bring ejectment against any one who wrongfully prevents him from obtaining possession.

So a mortgagee, whose right to take possession has not yet accrued, cannot before then sue for a trespass committed by a stranger.

As to the tenant's rights as against fox-hunters, see *ante*, p. 411. "Fox-hunting."

The tenant's right by virtue of his possession is limited to the protection of such possession, it gives him no rights of property even as against a stranger. Thus, if trees be cut down by a stranger, the tenant or occupier can only, it seems, sue for the trespass, and for the loss of shade, but cannot recover the *value* of the trees—that is a matter for the reversioner in whom the *property* in such trees is vested.

Liabilities of tenant.—The obligations of the tenant as regards third persons are correlative to his rights as the occupier. He is responsible for the condition of the premises, and if through their defective state a stranger is injured, it is the tenant generally speaking who is responsible. (As to the cases in which the landlord may be liable to third parties, see *ante*, pp. 423-7).

On this principle, the tenant is liable to a stranger for any injury resulting from defective fences (*Cheetham v. Hampson*, 4 T.R. 318).

Thus, if he suffer his fences to remain in a state of disrepair, so that his cattle stray through them on to his neighbours' land (*ib.*); or if he allows an area, cellar or grating adjacent or near to a public way to be unguarded or broken, to the injury of a passer-by; or if he allow his drains to get out of order, so as to be a nuisance either to his neighbours or the public; or, probably, if he causes damage to his neighbours or to passengers on a public way by using a barbed wire fence to his land, he is the person *prima facie* liable to an action at the suit of the injured person, apart from any criminal responsibility which may attach to him.

In *Humphreys v. Cousins* (L.R. 2 C.P.D. 239) it was held, with regard to drains, that a person having a drain under his house is bound to keep it so as not to injure his neighbour, although he has himself been guilty of no negligence, and the existence of the drain was not in any way known to him. His liability being grounded upon the fact that he is in law tenant in possession, not only of the surface, but of whatever is beneath it, and his responsibility for any mischief resulting from the drain is a duty incidental to his possession (*per Curiam*).

CHAPTER VIII.

CHANGE OF PARTIES TO THE TENANCY.

Assignment of Reversion or Lease.

We have hitherto spoken indifferently of landlord and tenant, and lessor and lessee ; as in their main features, the relative positions, rights and liabilities, of landlord and tenant are the same, whether they are the original parties to the tenancy or have become substituted for them. But there are some incidents connected with such change, *e.g.*, the mode of effecting it and its results, which require discussion in detail. The substitution is the result of a transfer, either of the reversion or the lease, or both ; such transfer taking place either by the voluntary act of the parties or by operation of law. As an instance of the first kind of assignment take the following case:—

A is lessor, B lessee. A assigns his reversion to C, who thereupon becomes B's landlord in place of A.

B then assigns his lease to D, who then becomes C's tenant in place of B, and the result is that instead of A and B, the original landlord and tenant, we have two entirely different persons, viz., C and D, in whom have

become vested, generally speaking, the respective interests, rights, and liabilities of A and B.

As an instance of a transfer of the second kind take the following :—

A becomes bankrupt, whereupon his reversion vests in his trustee in bankruptcy, and if B should also become bankrupt his lease would vest in his trustee in bankruptcy, or if A or B died their respective interests would pass to their respective legal representatives.

We shall discuss all these varieties of transfer in detail.

(1) *Assignment by Act of the Party.*

(a) *Agreement for Assignment.*

Where a transfer of his interest by either party is intended to be made, whatever be the extent or duration of such interest, the actual assignment is necessarily preceded by an agreement to make it, and such agreement, if action is to be taken upon it, *e.g.*, for breach, must be *in writing*, and signed by the party sought to be made liable on it or his agent (Statute of Frauds, s. 4). The subject of contracts for assignments more properly belongs to the law of vendors and purchasers, but it is convenient to mention here some of the chief points arising thereunder.

Contract to assign reversion.—A contract to assign a reversion gives the purchaser notice of the tenant's interest, and if he does not

trouble to inquire into it he may, after assignment, find himself liable to the tenant under covenants of the vendor; but he would not be liable on any collateral or purely personal contracts entered into by the vendor with the tenant. Moreover, a mere description of property as being in the occupation of a tenant does not amount to notice that he holds under a lease so as to put the purchaser upon enquiry into its terms; and if a person buys premises so described, understanding such occupation to be merely that of a yearly tenant, and it turns out that the property is on lease for a term of years, the purchaser may refuse to complete the purchase (see *Caballero v. Henty* (1874), L.R. 9 Ch. App. 447).

Contract to assign lease.—A contract to assign a term may amount to an actual assignment if specific performance of such contract could be enforced (see *Walsh v. Lonsdale*, 21 Ch. D. 9); otherwise, the only remedy for its breach is an action for damages.

Assignments on sale.—One of the commonest points in connection with the assignment on sale of a lease is the description of the property; if this be incorrect the purchaser is not bound to complete.

Where, for instance, property is described as held under a lease, the purchaser is not bound to take an underlease; or again, if a public-house is described as a free house, and it turns

out that the lease contains a tying covenant* the purchaser can repudiate the contract—and so where premises are held on a lease containing restrictive covenants, and the vendor describes them as held subject to certain restrictive covenants, specifying some, but omitting the rest—so as to imply that the only restrictive covenants are those mentioned—it is a misdescription which would entitle the purchaser to throw up the contract.

It may be thought the rule here laid down is inconsistent with the principle that the purchaser of a *lease* has constructive notice of the contents of the lease, but the rule must be read subject to this limitation that he has constructive notice of the covenants only when he has a fair opportunity of ascertaining what they are (see *Reeve v. Berridge* (1888), 36 W.R.), and whether he is buying a lease or an underlease. As to constructive notice of the original lease where a lessee agrees to grant an underlease, see *Hyde v. Warden* (1877), 3 Ex. Div. 72.

Right to proof of assignor's title.—On buying a *lease* the purchaser cannot, without special stipulation in that behalf, call for the title to the freehold reversion, nor, where he is buying an *underlease*, for the title to the leasehold reversion; but he can require production and proof of the title to the *lease* or *underlease* as the case

* As to tying covenants, see *ante*, p. 240.

may be (see Vendor and Purchaser Act, 1874, s. 2, rule 1; Conveyancing Act, 1881, s. 3 (1) (9), and *Gosling v. Woolff* (1893), 1 Q.B. 39).

The purchaser of a *lease* is further required by the Conveyancing Act, 1881, to assume, unless the contrary appears, that the lease was duly granted ; and, on production of the receipt for the last rent due before the date of actual completion of the purchase, to assume, unless the contrary appears, that the covenants and provisions of the lease have been duly performed and observed up to the date of such completion (s. 3 (4)).

And the purchaser of an *underlease* is also bound to assume, unless the contrary appears, that the underlease and every superior lease were duly granted ; and, on production of the receipt for the last rent due under the underlease before the date of actual completion, to assume, unless the contrary appears, that all the covenants and provisions of the underlease have been duly performed and observed up to the date of such completion, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease have been paid and duly performed and observed up to that date (s. 3 (5)).

Where the lessor's license to assign is necessary, it is the duty of the vendor and not of the purchaser to procure at his own expense such license.

On completion of the contract by the execution of the assignment, the purchaser is entitled to have the lease handed over to him, and to retain it as against the landlord on the expiration of the term,—the lessee or other person entitled to the land having always the right to hold the lease.

(b) *Assignment of Reversion.*

A reversion to a lease may be assigned, but the assignment must be by deed.

Effect of assignment.—The effect of the assignment is to pass to the assignee the right of the assignor to the rent and benefit of the covenants and provisions in the lease which run with the reversion (as to the meaning of this see *post*, p. 437), on which he can sue in his own name, and conversely to impose on him the obligation of the lessor's covenants which run with the reversion. But it seems that this will be so only where the lease is by deed, and that where the lease is not by deed the assignee of the reversion is not entitled to sue in his own name on covenants* in the lease, though he may distrain the tenant by virtue of the reversion which is vested in him—it being an established rule that the right of distress for rent is incident to a reversion—and

* "Covenant," as now generally used, means an agreement under seal: but, as already pointed out (*ante*, p. 105), strictly the word includes any agreement, whether under seal or not.

may also sue for waste, or for use and occupation.

The assignee of the reversion to a parol lease cannot then sue in his own name on the covenants (so called) in the lease, but must do so in the name of his assignor, unless rent has been paid to and accepted without objection by the assignee, in which case it seems a presumption of a new tenancy upon the same terms may arise, so as to give the assignee the right to sue the tenant in his own name, and conversely to be sued by the tenant, on those covenants which would, if the lease had been under seal, have run with the reversion. See *Elliott v. Johnson*, L.R. 2 Q.B. 120; *Smith v. Eggington*, L.R. 9 C.P. 145.

The subject is one of considerable difficulty, and depends upon the construction to be placed upon the old statute of 32 Henry VIII., c. 34, as altered by the Conveyancing Act, 1881, ss. 10-11 (see as to these sections, Clerke and Brett's Conveyancing Acts, p. 47, and Redman and Lyon, L. and T., p. 446).

Section 10 of the Conveyancing Act, 1881, further gives to persons who are *equitably* entitled to the reversion, though the *legal* estate may be in other persons—*e.g.*, trustees—the right to the rent and benefit of the lessee's covenants and provisions relating to the subject matter thereof—*i.e.*, covenants, etc., running with the reversion.

On the other hand, section 11 of the same Act makes the obligation of lessor's covenants running with the reversion binding on the reversioner for the time being, wherever the lessor can bind the reversion, *e.g.*, in case of leases granted by mortgagors under the statutory power of leasing conferred on mortgagors by the Conveyancing Act, 1881, or of leases created by a limited owner under a power, whether statutory or otherwise. In such cases the lessor's covenants will be binding on the legal reversioner for the time being. The section ensures the benefit of such covenants to the person in whom the lease is for the time being vested, who can therefore enforce them against the reversioner for the time being.

These sections only apply in case of leases granted after December 31, 1881.

What covenants run with the reversion.—All covenants which by the common law ran with the land now run with the reversion by virtue of 32 Henry VIII., c. 34. A covenant is said to run with the land when either the liability to perform it or the right to take advantage of it passes to the assignee of that land. A covenant is said to run with the reversion when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion (*Spencer's Case*, 1 Smith L.C. 65, 9th ed.). And such covenants respectively pass to those who are assignees by operation of law,

as well as to those who are assignees by act of the parties.

The following covenants run with the land and consequently also with the reversion, that is, are binding on and may be enforced by the assignees of the reversion:—

(1) All *implied* covenants (as to these see *ante*, pp. 115-129).

(2) (a) All *express* covenants in the lease relating to any part of the property demised in existence at the date of the lease, *even though* “*assigns*” *are not expressly named in the covenant*. Such would be express covenants by the *lessor* for title, *e.g.*, for quiet enjoyment or further assurance; for renewal; as to allowing deductions from rent; as to payment for improvements at end of tenancy; and express covenants by the *lessee*—*e.g.*, as to payment of rent; repairs; insurance; assignment of premises; cultivation and user of crops on land; giving lessor access to any part excepted from the demise; leaving land stocked with game; residence on the premises; particular trading on the premises; mode of user of the premises; (in a brewer’s lease) selling on premises only liquors bought from lessor; payment of compensation for injury to premises by mining; production of title deeds.

(b) Express covenants relating to something not in existence at the date of the lease, but to be done in or upon the demised premises, *only if*

“*assigns*” be named in the covenant—e.g., a covenant to build on the demised premises; or to carry coals on a railway to be constructed on the demised land; to give an option of purchase to the lessee.

But express covenants which do not in either of the above senses relate to the demised premises, but are *mere collateral or personal stipulations*, do not run either with the land or with the reversion, and consequently are not binding upon, nor can they be taken advantage of, by the assignee of the reversion, *even though assigns be named in the covenant*. Of this kind would be a covenant to build not upon the demised premises, but upon other land belonging to the lessor; a covenant by the lessor to give the lessee a right of pre-emption in respect of adjoining land; a covenant not to build within a certain distance of the demised premises; a covenant to pay taxes payable by the lessor in respect of other premises; a covenant not to hire persons to work upon the demised premises—e.g., a mill—except from the parish where such mill is situate. etc., etc.

So a covenant to deliver up at the end of the term live stock or other chattels let together with the property demised does not run with the land, and therefore cannot be taken advantage of by an assignee of the reversion, even though assigns be named in the covenant, just, as on

the other hand, it is not binding on an assignee of the lease. On the other hand, a covenant to repair or deliver up *fixtures* clearly runs with the land, whether assigns be named or not, because *fixtures are part and parcel of the freehold*. For further instances of collateral or personal covenants within this rule see Foa, L. and T., 2nd edition, p. 324.

Collateral covenants of a restrictive or negative character are binding on persons taking with notice of them.—Thus, if a lessor has entered into a covenant of this kind which would not be binding at law on his assignee, yet the latter may be bound by virtue of what is called the *equitable doctrine of notice*. This may be shortly expressed thus: If a person buys or leases, or even merely goes into occupation of property with notice of any negative covenant (including a covenant affirmative in form but negative in effect (*Clegg v. Hands*, 44 Ch. D. 503)) which would not be binding upon him at law, entered into by the person from whom he derives his title, he will be bound to observe it (see *Tulk v. Moxhay*, 2 Ph. 274; *Mander v. Falck* (1891), 2 Ch. 554). Such notice may be either actual or constructive, *e.g.*, a purchaser of the reversion to a lease has constructive notice of the contents of the lease, and would be bound by any covenants of the lessor of a negative kind. The doctrine in question has, of course, more practical

importance in the case of assignees of the lease, as lessors seldom enter into negative covenants, but the same principle applies where there is a covenant of this kind on the part of the assignor of the lease.

Conditions as well as covenants may run with the land, and consequently with the reversion, and in this respect covenants and conditions stand upon the same footing.

Apportionment of covenants and conditions on severance of the reversion.—Where the reversion becomes severed the covenants and conditions where apportionable will go with the severed parts. Such severance may arise by assignment of the reversion in the whole of the demised premises for a less interest than the assignor himself has, *e.g.*, where a tenant in fee simple conveys it for a term of years longer than that of the term on which his own reversion is expectant. Thus, A grants B a lease of seven years and then assigns his reversion to that lease to C for 21 years. Here a severance of the reversion takes place, that is, C is assignee of "*part of the reversion*" in the premises. Or the severance may be by assignment of part of the premises, but for the whole interest of the assignor; thus, A leases twenty acres of land to B for a term of years and then conveys ten of those acres to C, subject to B's lease. Here C is assignee of the "*reversion of part*" of the premises. In

both these cases the covenants will be apportionable, and now by the Conveyancing Act, 1881, all covenants and conditions in their nature apportionable will be apportioned on severance of the reversion in either of these ways (see Conveyancing Act, 1881, ss. 10-12).

When assignee's title complete.—The assignee of the reversion cannot sue for arrears of rent accrued due before the assignment, nor for breaches of covenant, although such covenant be one running with the land, which occurred before the assignment was made. But the assignment, whether absolute or by way of mortgage only, gives a complete title to the assignee at once without the necessity of any attornment or assent to him by the tenant or notice to the latter of the assignment; so that, if the tenant commits a breach of covenant, the assignee could simply by virtue of the assignment re-enter. The assignee need not give the tenant notice of a breach of covenant before suing for it. But as to giving notice of breach before enforcing forfeiture, see *post*, Chap. X., "Forfeiture."

Payment of rent before notice of assignment of reversion.—The tenant will not be prejudiced by any payment of rent, etc., properly made by him to his lessor without notice of the assignment. Thus he may safely pay his rent to his original lessor until he has notice of the assignment of the reversion, pro-

vided he does not pay it before it is due; for should he do so, and then receive notice of the assignment before the rent day, he will be liable to pay it over again, viz., to the assignee; and it will be no defence to say he has already paid it. Such prepayment is in effect considered to be in the first instance merely an advance made by the tenant to his landlord, though on the implied understanding that when the rent does become due it shall be treated as a satisfaction of the rent (see *De Nicholls v. Saunders*, L.R. 5 C.P. 589; *Cook v. Guerra*, L.R. 7 C.P. 132). Should the tenant in the above circumstances be obliged to pay a second time he would, it is conceived, be entitled to recover the amount from his former landlord. And should notice of the assignment not be given to the tenant until after the rent day, the prepayment would, it is submitted, in that case be good as against the assignee.

(c) *Assignment of Lease.*

We have now to consider the question of an assignment of the lease, and its effect upon the relative positions of landlord and tenant.

Every tenant, except a tenant at *will* or on sufferance, may, unless restrained from so doing by some provision in his lease, dispose of all or part of his interest.

Difference between assignment and underlease.—If the tenant disposes of the whole of his

interest it is an assignment, provided he *does it by deed*; if he disposes of less than his whole interest it is an underlease. If he disposes of part of the *premises* as distinguished from part of his *interest* therein, it is an assignment of part ; but if he disposes of part of his interest as distinguished from the premises, then it is an underlease of the whole, while he may also underlease part of the premises. Any of these things he has full liberty to do, unless there be anything in the lease restricting his right to assign or part with the premises, or any part thereof. (As to *underleases* see *post*, Chap. IX.).

Assignment must be by deed.—An assignment of the lease must be by *deed*, whatever the length of the term, and whether it be created by a lease under seal, or by a parol lease, *i.e.*, in writing or verbal. See as to registration of assignments, *ante*, pp. 258-60, 260 note.

Effect of underlease for residue of term.—Besides an express assignment an assignment may take place where the lessee purports to demise the premises for the whole residue of his term, or for a longer period—at least where he does so by deed—such demise, though in form an underlease, taking effect as an assignment, even if rent be reserved, and there be other covenants not in the lease.

But if such demise be not by deed, it seems that it cannot take effect as an assignment,

because, as already pointed out, an assignment of a lease must be by deed. In this case, therefore, the demise, as it cannot be an assignment, enures as a letting, though no distress can be had in respect of the rent reserved, but only a right to sue for it.

One of the most important distinctions between an assignment and an underlease is this, that in case of the former, the lessee parts with all his interest, and there is no longer any tenancy between him and the landlord, though he remains liable to him on any *covenants* in the lease; while the assignee of the lease assumes the liabilities of the lessee as tenant by virtue of the privity of estate between him (the assignee) and the landlord arising out of the assignment, and at the same time is bound to indemnify the lessee against the latter's liability on his covenants, which still remains notwithstanding the assignment.

But in case of an underlease proper, there is no privity either of contract or of estate between the lessor and the underlessee; but a new and distinct tenancy, with a right of distress, etc., is created between lessee and underlessee; while the original lease subsists unaffected by the sub-demise. (As to the position of the underlessee with regard to the original lessor see *post*, Chap. IX.).

The assignment must be of the legal estate.—
An assignment of the term must not only be by

deed, and of the whole of the assignor's interest therein, but it must be an assignment of the legal estate in the term. An equitable assignee, whether he is such by deposit of the lease with him as security, or under an agreement for an assignment, or is in possession by arrangement with the lessee, and even after payment of rent—is not liable to the lessor on the covenants of the lease ; nor can the lessor compel him to take a legal assignment for the purpose of making him so liable. But see as to the position of a person going into possession with notice of negative covenants, *ante*, p. 440.

A declaration by a tenant that he will stand possessed of leaseholds upon trust for the trustee of his creditors, has been held to be a breach of a covenant against assigning (*Gentle v. Falkner*, 68 L.J. Q.B. 848).

Possession not necessary to complete assignment.—It is the assignment, not possession under it, which makes the assignee liable to the lessor, so that a mortgagee of a lease by assignment, who has never taken possession, is, nevertheless, by virtue of the assignment, liable to the lessor, though his security may be worthless. Hence mortgages of leases are very commonly taken by way of underlease, leaving a nominal reversion in the mortgagor, so as not to impose on the mortgagee any liability on the covenants, or by privity of estate towards the lessor.

An assignee of the mortgagor's equity of

redemption in the lease is not liable to the lessor, as he is only an equitable assignee.

A general assignment of personal property—*e.g.*, for the benefit of creditors—will operate as an assignment of any lease comprised in such property, as a lease, however long the term, is in law personalty, and not realty.

But an assignment of chattels personal specifically enumerated, and “all other the personal estate” of the assignor, will not include a lease, but will be confined to personal chattels *ejusdem generis*.

Assignee must indemnify lessee.—We have already stated (*ante*, p. 445) that the assignee of a lease is bound to indemnify the lessee against the rent and covenants of the lease, and the lessee can require the insertion in the assignment of express covenants by the assignee to pay the rent and perform the covenants, and to indemnify the lessee in respect thereof, and even if the assignee is a compulsory purchaser under statutory powers, a similar covenant must be given to the lessee.

So, where the assignee in his turn becomes an assignor by assigning over to another person, he is entitled to a similar covenant from his assignee, and so upon the occasion of every assignment, the last assignor is entitled to this covenant from his assignee, unless the last assignor was himself not bound to give the covenant to *his* assignor. Thus, if

the lessee or assignee of the lease became bankrupt, there is an assignment of the lease by operation of law (see as to this *post*, p. 451) to the trustee, and if the latter in turn assigns over, *e.g.*, to a purchaser, the latter cannot be required to give the trustee or the bankrupt any such covenant, as the liability of both bankrupt and trustee ceases on assignment.

In addition to the indemnity which each successive assignee is bound to give to his immediate assignor, he is under an implied obligation to keep the original lessee indemnified against the covenants in the lease.

Where an assignee of a lease creates a sub-lease by way of mortgage, and such sub-lessee is in possession, the latter is not liable to indemnify the lessee in respect of rent which the lessee has been compelled to pay under his covenant (*Bonner v. Tottenham and Edmonton Permanent, etc., Building Society* (1899), 1 Q.B. 161).

Difference between obligation of lessee and assignee.—But the obligation of the assignee, whether to his immediate assignor or to the original lessee, is only co-extensive with the duration of his own interest as assignee, or, in other words, he is only bound to indemnify against breaches occurring during the continuance of his own estate; he gets rid of this liability as well as his direct liability to the lessor immediately on assigning over, even if

he assigns to a man of straw for the purpose of getting rid of it, provided the assignment be a real and not a mere colourable transaction. In this respect, the position of an assignee differs from that of the original lessee who, as we have already pointed out (*ante*, p. 445), always remains liable to the lessor on his *express* covenants, though with a right of indemnity from the successive assignees of the lease. But as to *implied* covenants of the lessee, it seems that the latter will be released from them where the assignee has by payment of rent or otherwise been recognised by the lessor as his tenant.

Liability of assignee to lessor.—As already stated, the assignee of a lease is liable to the lessor on all covenants in the lease which run with the land (see *ante*, p. 437), and also on all negative restrictive covenants of the lessee of which he has notice, when he takes the assignment, whether he would be otherwise liable on them or not (see *ante*, p. 440). In case of parol leases the assignee is not liable to the lessor or assignee of the reversion, unless, by payment of rent, etc., a presumption of a tenancy between them on the same terms as before may be raised (see *ante*, p. 436).

Extent of liability of assignee to lessor.—As to rent the assignee is only liable to the lessor for such rent as becomes due during the time he is assignee, and before he re-assigns, and for the

proportion of further rent down to the time of such re-assignment; and as to breaches of covenant he is not liable for any occurring either before the assignment to him or after the re-assignment by him.

If a tenant from year to year under a parol contract of letting assigns his interest, though he has parted with his *estate*, he remains liable under his *contract* to his landlord, at least, until the latter recognises the assignee as his tenant. But, if before acknowledging such assignee as his tenant, the landlord should assign his reversion, the assignee of the reversion cannot recover from the original tenant rent becoming due after the assignment (see the cases of *Shine v. Dillon*, 15 W.R. 847; *Allcock v. Moorhouse*, 9 Q.B.D. 366).

As to the liability of an executor, or administrator, in whom a lease has become vested, see *post*, p. 453. •

Rights of assignee against lessor.—Correlatively to his liability to the lessor, or the assignee of the reversion, the assignee of the lease can sue such lessor or assignee of the reversion on all covenants which run with the land (as to these see *ante*, p. 437).

An option to purchase the fee-simple given to a lessee or his assigns is not exercisable by an equitable assignee (*Friary Holroyd, etc. v. Singleton* (1899), 1 Ch. 86).

(2) *Assignment by Operation of Law.*

The reversion or the lease may become transferred to others by operation of law, *e.g.*, on the death, taking in execution of the interest, or the bankruptcy of either landlord or tenant.

Assignment by Death.

(a) *Death of reversioner.*—On the death of a landlord, since January 1, 1898, his *freehold* reversion will now by virtue of the Land Transfer Act, 1897, on his death, notwithstanding any testamentary disposition, vest in his personal representative in the same way as his leasehold reversion would vest in such representative.* But the personal representative only holds the reversion in trust for the devisee, or heir-at-law, or other the person beneficially entitled thereto; the object of the new law being to facilitate the administration of the deceased person's estate (see Land Transfer Act, 1897, Part I.).

The personal representative takes the freehold reversion just as if it were leasehold reversion, *i.e.*, as a chattel real, and subject to the same powers, rights, duties and obligations, except that it shall not be lawful for some or one only of several joint personal representatives to sell or transfer such freehold reversion

* The common law rule that in the case of joint tenants—*e.g.*, trustees—on the death of one the whole interest goes to the survivor, is not affected by this enactment.

without the authority of the Court (see s. 2, sub-s. 2).

In the case of a freehold reversioner dying intestate, it is not clear in whom the reversion vests pending the appointment of his administrator, whether in the heir-at-law, or in the High Court of Justice. The point has yet to be decided, and some difficult questions are likely to arise with regard to the construction and effect of the Land Transfer Act, 1897, in this respect.

A *leasehold* reversion—*i.e.*, a reversion to an underlease—has always vested in the executor or administrator of the deceased reversioner.

(b) *Death of tenant.*—On the death of the tenant, whether lessee or assignee, his interest in the lease vests, in the first instance, in his personal representatives—*i.e.*, his executor or administrator—even though it has been specifically bequeathed, and where a lease has been bequeathed, the legatee's title to it is not complete until the executor has assented to the legacy, for he may require to sell it for payment of the debts of the deceased.

Difference between position of executor and administrator.—There is this difference between the position of an executor and that of an administrator, *viz.*, that the former derives his title from the will, and he is therefore legal owner of the lease immediately on his testator's death ; but an administrator has no title until

he has been appointed by the Court, though on his appointment his title may relate back to the death of the intestate, at any rate as regards any act done for the benefit of the estate.

Therefore an executor, even before probate has been granted, may do many acts as such—*e.g.*, he may assign or surrender a lease ; but an assignment of a lease by a person not yet appointed administrator would be void.

Where there are several executors or administrators, any one of them can act alone ; so he may alone execute an assignment of a term, though the assignment purported to be by all the executors or administrators. One executor may assent to a bequest of a lease to himself.

If the executor act at all he must act *in toto*. He cannot disclaim a part of the estate.

The liabilities of executors and administrators.—This important subject is surrounded with a good deal of difficulty.

First, as to the liability for rent and breach of covenants occurring before the death of the deceased lessee, the executor or administrator is liable as such so far only as he has assets.

As to rent becoming due, and breach of covenants occurring *after* the death of the deceased tenant, the position of the executor or administrator appears to be as follows :—

It is said he may be sued either in his representative capacity, or personally, as

assignee of the term, and in the latter case even *de bonis propriis* (out of his own property).

But as to this, it seems the executor or administrator is only personally chargeable as assignee where he has either actually or constructively entered into possession of the premises; and, moreover, there is a difference in his liability according as he is sued for rent or for breach of covenant, other than that for rent.

As regards *rent* the executor or administrator is chargeable with what he has, or might with reasonable diligence have made out of the premises—*i.e.*, the annual value—but as to *breach of covenant* he is personally liable for the whole loss or damage resulting from such breach (see the cases of *Rendall v. Andreae*, 61 L.J. Q.B. 630; *Sleap v. Newman*, 12 C.B. N.S. 116; *re Bowes*, *Strathmore v. Vane*, 37 Ch. D. 128; *Tremeere v. Morison*, 1 Bing. N.C. 89).

An executor *de son tort** is personally liable on the covenants of the lease; and, if he has taken possession, he may be charged for subsequent *rent* as assignee of the term. If he has not taken possession he may be charged as executor or administrator during the term.

Discharge of executor by assignment.—The executor or administrator may assign the lease

* An executor *de son tort* is a person who, though not appointed executor by the testator, by wrongfully intermeddling with the deceased's assets, incurs the liabilities of an executor.

and so get rid of his liability. If his testator or intestate was assignee of the lease the executor by assigning gets rid of all further *personal* liability. If the testator or intestate was the original *lessee*, the executor or administrator, notwithstanding assignment, still remains liable to the extent of assets on all express covenants, and so he will where the testator has himself assigned.

Again, the executor or administrator is provided with a statutory mode by which he may rid himself of liability on the covenants. For, by 22 and 23 Vict., c. 35, s. 27, where he has (1) satisfied all liabilities already due and claimed under a lease or agreement for one granted or assigned to his testator or intestate; (2) set apart a sufficient sum to answer any future claim in respect of a *fixed* sum under the lease; (3) assigned the lease to a *purchaser*, and (4) distributed the residuary estate, he will no longer be personally liable in respect of any subsequent claim under the lease, but the lessor may follow the distributed assets for the purpose of claiming in respect of any breach of covenant.

In the case of a specific bequest of a lease the assent of the executor to it will, as already mentioned (see *ante*, p. 452), complete the legatee's title, and as from that time he has all the rights and liabilities of an assignee of the lease.

Assignment by Bankruptcy.

(a) *Bankruptcy of reversioner*.—On the bankruptcy of a lessor his reversionary estate vests in his trustee in bankruptcy as “property” (Bankruptcy Act, 1883, ss. 54, 168); and such trustee therefore becomes in law assignee of such reversion, and by virtue of s. 57 of this Act the trustee has all the rights of the lessor as to suing or defending proceedings on his behalf.

Section 55 of the Bankruptcy Act, 1883, presumably enables a trustee to disclaim a reversion where there are onerous covenants binding on the lessor, and on disclaimer a vesting order may be made by the Court (as to vesting orders see *post*, p. 463), and the tenant would probably have a right to apply for an order in his own favour.

As to disclaimer, in case where the landlord is a sub-lessor, see *post*, p. 459.

A tenancy at will is determined by the bankruptcy of the lessor as soon as that is known to the tenant, by reason of the assignment of the reversion which takes place.

(b) *Bankruptcy of the tenant*.—If the lease does not provide for a forfeiture in case of the lessee becoming bankrupt (see “Proviso for re-entry,” *ante*, p. 252), his interest passes on adjudication to the official receiver or trustee when appointed, who becomes assignee of the

lease by operation of law (see Bankruptcy Act, 1883, ss. 54, 168). An agreement for a lease would also vest in the official receiver or trustee of a person having a right to call for a lease.

But a trustee in bankruptcy, in whom a lease becomes vested, is in some respects in a better position than an ordinary assignee. Thus, he can assign over the lease without any license, though the lessee could not himself have done so. Again, not only can the trustee on expiration of the tenancy claim from the landlord all that the tenant could have claimed, but where (*e.g.*) he claims allowance for tillage and cultivation of the demised property during the time he was in possession, he is not liable to be met with a claim of set-off by the landlord for rent accrued due before the bankruptcy (see *Alloway v. Steere* (1882, 10 Q.B.D. 42)—a case decided on the Act of 1869, but applicable to bankruptcy under the present Act).

On the other hand, unless the trustee disclaims the lease he is liable *personally as assignee*, whether he takes actual possession or not, for rent from the date of his appointment, and on such covenants in the lease as bind assigns in respect of breaches committed during the time he is such, though he has a right to be indemnified out of the bankrupt's estate. But to get rid of his liability, as such, he may, like any other assignee, assign over to

a mere man of straw; and after discharge he cannot be ordered to pay rent.

The Act 56 Geo.III., c. 50 (cited *ante*, p. 227), prevents a trustee, notwithstanding disclaimer from disposing of hay, straw, etc., where the bankrupt was under covenant or agreement to consume it on the premises; nor will a disclaimer, after sale, alter the position of the trustee, who would be liable to an action by the landlord, without the right to counterclaim in such action for improvements, proceedings to recover compensation being by way of arbitration only (see *Lybbe v. Hart*, 29 Ch. D. 8; *Schofield v. Hinks*, 58 L.J. Q.B. 147).

Disclaimer of lease by trustee.—We have already (*ante*, pp. 456, 457), referred to this subject, which is one of great difficulty. We now propose to discuss the provisions of the Bankruptcy Act, 1883, relating thereto.

By s. 55 of the Act, where a bankrupt's leasehold property is burdened with onerous covenants, or is unsaleable by reason of any obligation on the possessor of it, the trustee, notwithstanding that he has endeavoured to sell or has taken possession, or has exercised any acts of ownership in relation thereto, may by writing signed by him disclaim such property (sub-s. 1). The signature of the trustee's solicitor to the disclaimer is not sufficient. The disclaimer must be filed in the Court, and

until filing it is inoperative (Bankruptcy Rules 1890, R. 69 (4)).

The section applies to a trust lease, to an expired term, to a tenancy under an attornment clause in a mortgage deed, and apparently any kind of tenancy which answers the description of unsaleable or unprofitable, but not to an equity of redemption in a lease mortgaged by the bankrupt by assignment, as distinguished from a mortgage by underlease, and in this case no disclaimer is necessary. Section 55 also enables a trustee to disclaim property consisting of "unprofitable contracts," which would include agreements for leases containing terms onerous to the lessor. A trustee cannot disclaim part only of the demised premises.

Leave of Court to disclaim lease.—The right of the trustee to disclaim a lease is subject to the leave of the Court, except in the following cases, viz. (i.) where the bankrupt has not assigned, sub-let, or mortgaged the lease, and (a) the rent and annual value are less than £20, or (b) if the estate is being summarily administered as a small bankruptcy under s. 121 of the Act, or (c) the trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days after receipt of such notice give the trustee notice requiring him to bring the matter before the Court ; (ii.) where the bankrupt has sub-let or mortgaged the lease, and the trustee serves the

lessor and the sub-lessee, or the mortgagees with notice of his intention to disclaim, and none of the parties so served within fourteen days after service requires the matter to be brought before the Court.

In all other cases the leave of the Court is necessary before the trustee can disclaim, and disclaimer without such leave is void (B. Act, 1883, s. 55 ; B. Act, 1890, s. 13 ; B. Rules, 1890, R. 69).

And where leave is necessary, and only in that case, sub-s. 3 of s. 55 provides that the Court, before or upon granting it, may require such notices to be given to persons interested, and may impose such terms as a condition of granting it, and make such orders with regard to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court thinks fit.

As to compensation for improvements, the trustee is entitled to them by virtue of s. 61 of the Agricultural Holdings Act, 1883.

In determining whether to grant leave to disclaim, the Court will only consider the interests of those concerned in the bankruptcy ; but its discretion as to the imposition of fair terms is absolute.

As an illustration of what would justify the Court in imposing terms—*e.g.*, compensation to the landlord—as a condition of leave to dis-

claim, may be mentioned the fact that the trustee has had beneficial occupation of the premises, and that the landlord has been kept out of possession (*ex parte Isherwood*, 22 Ch. D. 384).

Time for making disclaimer.—The trustee must disclaim within twelve months after first appointment of a trustee, except where the property has not come to his knowledge within one month after such appointment, when he may disclaim at any time within twelve months after he came to know of it, or such further time as the Court may allow (B.A., 1883, s. 55, sub-s. 1; B.A. 1890, s. 13). And, again, where any person interested in the property serves the trustee with a written application to decide whether he will disclaim or not, and he declines or neglects within twenty-eight days after such application, or such extended time as the Court will allow, to give notice whether he disclaims or not, the trustee cannot thereafter disclaim (s. 55, sub-s. 4).

The trustee should apply for an extension of time within the twenty-eight days, though he may obtain it afterwards on special circumstances being shown; and such extension may be allowed on terms, as in *re Page* (14 Q.B.D. 401), where leave to disclaim was only given on condition of a month's rent and the landlord's costs being paid to him by the trustee personally. An order to disclaim is not

appealable, at least where the trustee has under it executed a disclaimer.

Effect of disclaimer.—The effect of the disclaimer is to determine, *i.e.* to put an end to—as from the date of the disclaimer—the rights, duties, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and also to discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but not, except for the purpose of releasing the bankrupt and his property and the trustee from liability, to affect the rights or liabilities of any other person (s. 55, s-s. 2). This sub-section does not relieve the trustee from liability for a wrongful act done before disclaimer, *e.g.*, selling hay, etc., off a farm contrary to the tenant's agreement (see *Schofield v. Hincks*, 58 L.J. Q.B. 147).

The effect of the disclaimer is to put an end to the lease absolutely, *qua* the tenant and his estate, and also to the rights of the landlord upon the lease as against the bankrupt and his estate, except the right to distrain for rent to the extent permitted by the Act, while it also leaves him at liberty to prove in the bankruptcy for the amount of his claim.

It will be noted that s-s. 2 does not “affect the rights or liabilities of any other person.” This may be explained in the following way:—If the bankrupt was a lessee the disclaimer

ends the lease and the lessee's liabilities under it; but if the lessee has sub-let, the disclaimer does not destroy the sub-lease, but merely makes the sub-lessee liable on the covenants in the lease. If the bankrupt was assignee of the lease the disclaimer only avoids his interest as such, leaving the liabilities of the original lessee in full force. So a surety for the bankrupt for payment of rent would still remain liable, notwithstanding disclaimer.

Vesting order in respect of disclaimed property.—Where a lease has been disclaimed under the foregoing provisions of the Act the Court may on application by any person claiming an interest in such lease, or under any liability not discharged by the Act in respect of such lease, make an order for the vesting of such lease in any person (including the lessor) entitled thereto, or to a trustee for him, and on such terms as the Court thinks just; the property vesting in such person or trustee without any conveyance or assignment for the purpose (s. 55, sub-s. 6). Provided that a vesting order shall not be made in favour of any person claiming under the bankrupt as underlessee or mortgagee by demise, except subject to the same liabilities and obligations as the bankrupt was subject to under the lease at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such term shall be excluded

from all interest in and security upon the lease ; and if there be no person claiming under the bankrupt who is willing to accept an order on these terms, the Court may vest the bankrupt's estate and interest in the lease in any person liable, either personally or in a representative capacity, and either alone or jointly with the bankrupt, to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt (*ib.*).

But by s. 13 of the Bankruptcy Act, 1890, the terms on which an underlessee or mortgagee may obtain a vesting order may be modified by the Court so as to put such underlessee or mortgagee in the position of an assignee merely and not in that of the original lessee, whose contractual liability, according to the strict interpretation of s-s. 6 of s. 55 of the Bankruptcy Act, 1883, would remain, notwithstanding assignment.

Upon application for a vesting order the Court may order such persons to be served as it thinks fit. The lessor and assignee of the lease should generally be served.

A mortgagee by sub-demise cannot avoid the obligation to elect whether he will take a vesting order or forfeit his interest, simply by assigning to a person as a trustee for himself, in order to escape liability, even though such

person be willing to take a vesting order (*ex parte Hepburn, re Smith*, 25 Q.B.D. 536).

The operation of sub-s. 6 of the Act of 1883, as amended by s. 13 of the Act of 1890, is illustrated by the case of *re Walker, ex parte Mills* (64 L.J. Q.B. 783), where the vesting order was made on the terms that the mortgagees should perform all the covenants and obligations of the lease, and that on the landlord being given six months' notice in writing he should be bound to accept a surrender. As to the parties to the application for a vesting order see *re Morgan* (22 Q.B.D. 592).

Where a lease is disclaimed by the trustee in bankruptcy of the assignee, and no vesting order is made, a yearly tenancy *by estoppel* (see *ante*, p. 23) arises between a mortgagee of such assignee and the lessor, by entry and payment of the original rent by the mortgagee, though done merely in order to preserve his security; and such rent may be sued for by the lessor, though he had a remedy also by distress (*Jump v. Payne*, 68 L.J. Q.B. 607).

Proof by persons injured by disclaimer.—Any person injured by the operation of a disclaimer is to be deemed a creditor, and may prove in the bankruptcy to the extent of such injury (Bankruptcy Act, 1883, s. 55, sub-s. 7).

In such case the measure of the injury would be the difference between the rent reserved for

the residue of the term from the commencement of the bankruptcy, and the present letting value, plus the loss sustained by non-performance of the tenant's covenants to repair during the unexpired residue of such term; and in case of an underlease at a less rent than that reserved by the original lease, the measure of damages is the difference between the rent agreed to be paid by the bankrupt, and the higher rent reserved by the superior lease (see Redman and Lyon, L. and T., pp. 467-8, and cases there cited).

Position of liquidator of company.—The liquidator of a company being wound up under the Companies Acts does not, by *taking or retaining possession* of property demised to the company, become personally liable for the rent, because the company's property does not vest in him, and the occupation is the occupation of the company. The liquidator is only the ministerial officer of the company, which remains in existence until dissolution.

The case is quite different from that of a trustee in bankruptcy, in that (1) the property does not vest in the liquidator, (2) he has no right of disclaiming the lease (see Buckley on the Companies Acts, 7th ed., 1897, p. 268).

Even where, under s. 203 of the Companies Act, 1862, the Court orders the company's property to vest in the liquidator, he does not

become personally liable for the rent (*Graham v. Edge*, 20 Q.B.D. 683).

Assignment by Taking in Execution.

(a) *Taking in execution of reversion.*—Where an execution is issued against a landlord, his reversionary interest in property demised by him, or his predecessor in title, may be taken by the sheriff or other judicial officer in satisfaction of the creditor's claim. Where a writ of *clegit* is issued the process thereunder operates as an assignment in law of the reversion, and therefore the tenants cannot be turned out except on the termination of their tenancies, whether by effluxion of time, notice to quit, or otherwise. The judgment creditor by virtue of such assignment can sue or distrain the tenant for rent accrued due since the execution was put in force, but not for rent previously due. So he may give the tenant such notice to quit as the debtor might have done, and thereafter bring ejectment against him. On satisfaction of the judgment debt and costs the Court will order possession of the land to be restored to the debtor, which will, in effect, be a re-assignment to him of the reversion.

Judgments against land do not affect such land until it has actually been taken in execution (Judgments Act, 1864, s. 1).

Equitable interests in land may now be seized by means of the appointment of a

receiver, who will be entitled to stand in the shoes of the landlord for the purpose of claiming rents, etc., from the tenants of the judgment debtor.

A leasehold reversion being personalty may be taken in execution under the ordinary writ of *fi. fa.* In such cases, if the sheriff sells the leasehold reversion he must execute an assignment of it to the purchaser, who may then obtain possession as against the tenant by ejectment, or he may sue or distrain him for the rent.

(b) *Taking in execution of the lease.*—The sheriff may under execution against a tenant, whether for years or from year to year, seize his interest in the demised premises and sell it, though, as already stated, he must execute a formal assignment by deed to a purchaser. Putting the creditor into possession under a writ of *fi. fa.* does not operate to pass the term to him, and the debtor could, strictly speaking, bring ejectment to recover possession against him. Until a legal assignment is executed by the sheriff the term remains vested in the debtor. Where the sheriff seizes a lease and fixtures he must sell the latter separately, unless he can get a purchaser for the whole.

The purchaser from the sheriff becomes liable as assignee of the term, the lessee, however, remaining liable to the lessor on his covenants.

CHAPTER IX.

UNDERLEASES.

We have already referred to the subject of underleases, especially in noting the distinction between an assignment of a lease, and an underlease (see *ante*, pp. 444-5). It may be convenient to repeat here that an underlease, if it purport to be for the whole residue of the lessee's (underlessor's) interest, or for a longer period, will, if *by deed*, operate as an assignment, if *not by deed* it can only enure as a letting to the extent of giving the underlessor the right to sue the underlessee for rent, or for breach of contract, or for use and occupation, but not to distrain for rent.

But where the underlessor has a lease of uncertain duration—*e.g.*, where he is a yearly tenant—he can sub-let either from year to year, or for a term of years, and such underlease will be good so long as the interest of the sub-lessor continues.

Subject to the foregoing remarks the relation of underlessor and underlessee, as between themselves, is the ordinary relation of landlord and tenant.

Position of underlessee to lessor.—We have also noted before another distinction between

the assignee of a lease and an underlessee, as regards the original lessor (see *ante*, p. 445).

The underlessee is in fact an entire stranger to the latter, there being no privity either of estate or contract between them, and the only liability, *qua* the lessor, which the underlessee incurs is the risk of his immediate lessor (the sub-lessor) committing a breach of the superior lease, *e.g.*, by non-payment of rent, or non-performance of the covenants. In such a case the underlessee runs the risk of a distress or ejectment—as the lessee cannot, as against his landlord, create any interest, except subject to his own obligations—and the underlessee may even be restrained by injunction from committing a breach of a covenant in the superior lease, even though by the sub-lease he had permission to do the prohibited act.

A common instance of this occurs in the case of covenants in the superior lease against particular user of the premises, where the sub-lease contains no such restriction. In such a case it has been held that the original lessor is entitled to damages against the sub-lessor, and an injunction against the sub-lessee (see *Tritton v. Bankart*, 56 L.T. 306).

An underlessee may now obtain relief against forfeiture of his underlease, through the act or default of his immediate lessor (see as to this *post*, Chap. X.).

Very commonly an underlease contains

covenants identical with or similar to those in the superior lease, or a covenant in terms to perform the covenants in the superior lease. In the latter case the underlessee is a surety for the original lessee who, if compelled to defend proceedings for breach of covenant, is entitled to be indemnified by the sub-lessee for any costs incurred. But in the former case there is no contract of indemnity unless there be an express reference to the superior lease, because the liability under the covenant in the superior lease may be substantially different from that under a similar covenant in a sub-lease. The terms of the covenant to repair must in each case be construed with reference to the age and character of the premises at the time of the demise. "It is common knowledge," said Pollock, B., in *Pontifex v. Foord* (1884), 12 Q.B.D. 152, "that where there is a covenant to repair in a lease and sub-lease, and a surveyor is called in to make an estimate of the damage arising from non-fulfilment of the covenant, the first question he goes into is as to the character and age of the house when the tenancy commenced."

The principle involved is clearly explained in *Logan v. Hall* (4 C.B. 598); *Payne v. Haine* (16 M. and W. 541), cases which indicate the varying effect of covenants using the same words according as the words are to be applied to an old or a new house. For the measure of

damages in case of breach of covenant to repair in an underlease see *Ebbetts v. Conquest* (1895, 2 Ch. 377 ; S.C. sub. nom. *Conquest v. Ebbetts*, 1896, A.C. 490, cited *ante*, p. 200).

Sometimes property comprised in one lease is divided on sub-letting. In such a case the whole of the rent is payable out of any portion of the property so that each underlessee is liable to be distrained for the whole of it, and if he pays it under threat of distress it seems he has no right of contribution as against the other underlessee, because there is no liability between them to a common demand (see *Hunter v. Hunt*, 1 C.B. 300 ; and see also *Johnson v. Wild* (1890), 44 Ch. D. 146). In the latter case the lessee had assigned part of the premises in the lease, and underlet the remainder, and the assignee having under threat of distress by the superior landlord paid the whole of the rent, it was held that he had no right to contribution from the underlessee.

CHAPTER X.

OF THE MODES IN WHICH A TENANCY IS DETERMINED.

There are various ways in which a tenancy may come to an end. These are (1) by effluxion of time ; (2) by merger of the term in the reversion ; (3) by surrender of the lease to the lessor ; (4) by virtue of an express power to determine it ; (5) by disclaimer ; (6) by forfeiture ; (7) by notice to quit. The subject of notice to quit is dealt with separately, see *post*, Chap. XI.

(1) *Determination by Effluxion of Time.*

This is the mode in which most leases come to an end. When the term of the lease is a fixed one, it determines *ipso facto* at the end of such term, and if the duration of the term is conditional, that is, if the term is defeasible on the happening of a certain event it expires automatically on the happening of such event. In neither case is any notice to quit on either side necessary. So an underlease determines when the original lease comes to an end.

(2) *Determination by Merger of the Term in the Reversion.*

Whenever a term and the reversion immediately expectant on it become vested in

the same person in the same right, the term becomes merged in the reversion and extinguished. The term and the reversion must be both of the same kind, that is, both legal or both equitable, and both held in the same right, not one held as trustee and the other beneficially.

What prevents merger.—Further, there must be no intervening estate, even if a nominal one merely. Thus, if A grants B a lease for twenty-one years and B grants a sub-lease to C for twenty-one years, less one day, and D then buys A's and C's interests, there is no merger because there is a nominal reversion of one day between B's term and C's term.

Moreover, where A demises to B and B sub-lets to C, B could not surrender his lease to A so as to defeat C's sub-lease; but on any such surrender A's reversion would be deemed to be the reversion to C's sub-term, so as to preserve such sub-lease with all its incidents, A becoming C's landlord in place of B. The same result would follow were A's reversion and B's term to become vested in one and the same person so as to cause a merger of B's term: the sub-lease would not be affected by such merger in A's reversion (see 8 and 9 Vict., c. 106, s. 9).

(3) *Determination by Surrender of the Lease to the Lessor.*

The tenant, that is the lessee or assignee of the lease, may surrender the lease to the reversioner.

The following conditions are necessary to a valid surrender :—

(i.) It must be to the *immediate* reversioner. A sub-lessee cannot therefore surrender to the original lessor.

(ii.) It must be by the consent of both parties to the tenancy.

(iii.) The tenant must have an actual estate in possession. A mere *interesse termini*, such as a lessee has before entry, is not sufficient to enable a surrender, strictly speaking, to be made. But, of course, both parties to the lease can by mutual agreement put an end to the contract between them. An assignee of a lease can surrender before entry.

(iv.) The surrender, where it is by the express act of the parties and not by operation of law merely (as to which see *post*, p. 476), must be by *deed*, except in cases where the lease does not exceed three years in duration, at a rack rent, *i.e.*, a rent of not less than two-thirds of the improved annual value, when it need not be by deed, but must, at least, be in writing, even though the lease itself was not in writing, otherwise such surrender is void at law (see 8 and 9 Vict., c. 108, s. 3). But, in such a case, though void at law, the invalid surrender may be good in equity as an agreement to surrender of which specific performance could be granted.

The surrender must either be an actual conveyance or must express an intention to convey

to the reversioner the estate of the lessee ; but no particular form of words is essential. The mere cancellation of a lease, even by mutual consent, does not amount to a surrender ; but cancellation, followed by the grant of a new lease to the lessee is evidence of a surrender by operation of law (*q.v.*).

Surrender by operation of law.—There are various cases where a surrender is *implied by law* from the acts of the parties. A common illustration of this is where a new lease is granted during an existing one either to the same tenant, or to another person with his consent, possession being also given up to such person (see *Wallis v. Hands* (1893), 2 Ch. 75).

If the grant of a new lease is relied upon as evidence of a surrender by operation of law of the former lease, it is essential that the new lease should be a valid one, and that it carries out the intention of the parties, otherwise it does not work a surrender of the old lease. An agreement for a new lease, if specifically enforceable, is equivalent to a new lease, and has the same effect in implying a surrender of the former one.

Again, if the relation between the parties to a lease is changed from that of landlord and tenant into something inconsistent with the continuance of the lease, that operates as a surrender.

Surrender by giving up possession.—Another

nstance of implied surrender occurs where the tenant gives up possession, and the landlord either actually or constructively takes possession. It is not, however, sufficient for the tenant to abandon possession unless the landlord assents to such abandonment and resumes possession.

The landlord may either expressly or impliedly resume possession—*e.g.*, by accepting as tenant a third person to whom the tenant has given up possession.

But giving up possession to a third person in itself raises no presumption of a surrender, but if anything, only of an assignment or under-lease.

But unless the resumption of possession by the landlord is *clearly* with the intention of accepting it from the tenant, it is necessary to prove whether in fact he has so accepted it; and it is not conclusive that the landlord has done some act in or about the premises which an owner in possession might do, because such act may have been done for quite another reason—*e.g.*, sending workmen to do necessary repairs, or putting in a caretaker, are acts *prima facie* as much for the benefit of the tenant as the landlord. Even putting up notice boards in order to relet the premises has been held not to be inconsistent with the continuance of the tenant's possession, unless

the premises have been thereby relet (see *Oastler v. Henderson*, 2 Q.B.D. 575).

Surrender by reletting. — But letting to another person, whether or not by the request of the tenant after the latter has quitted possession, is an unequivocal act of ownership by the landlord, quite inconsistent with the continuance of the old tenancy.

So if the landlord accept the key of the premises on the express understanding that the tenancy is to be determined: but the tenant cannot by merely giving up the keys, or leaving them with or sending them to the landlord, make him accept possession in this way. Nor is the fact that the landlord retains the keys instead of sending them back conclusive to show that he has accepted possession, as he may not know where to send them.

But where the landlord, after refusing to accept the key, afterwards put up a board to let the premises, and used the key to show them, and painted out the tenant's name from the front of the premises, it was held that this was evidence of acceptance so as to work a surrender by operation of law (*Phene v. Poppewell*, 12 C.B. N.S. 334). Compare with this *In re Panther Lead Company* ((1896), 1 Ch. 978). There premises, demised to a company which afterwards went into liquidation, were in the beneficial occupation of the liquidator down to a date when he delivered the keys to the lessor's

agents, who accepted possession without prejudice to the question as to the lessor's rights under the lease. The lessors were unable to let any part of the premises, which remained vacant and unproductive. Under these circumstances it was held that there was no such acceptance of possession in the sense that the term or liability of the company under the lease was to be ended, or so as to constitute a surrender by operation of law.

No implied surrender follows the mere acceptance of an insufficient notice to quit.

Where the landlord accepts a third person as tenant in place of the original tenant, or recognises him as such as by giving him notice to pay his rent to him, this will amount to a surrender in law of the original tenancy. But mere receipt of rent from such third person is not in itself sufficient to show that the landlord recognises him as tenant in place of the lessee.

Operation of surrender.—The surrender will only operate as between the lessor and lessee; it will not prejudice or affect a sub-lessee, unless the latter be party or assent to the surrender.

So a lessee cannot voluntarily surrender his lease so as to affect the rights of third parties who have entered into contracts with him on the footing of his lease being a continuing one; e.g., a mortgagee of tenant's fixtures with a

right to enter and sever the fixtures may do so, notwithstanding that the tenant surrenders his lease and a fresh lease is granted to a third party (see *London and Westminster Loan and Discount Company v. Drake*, 6 C.B N.S. 798).

We have shown (*ante*, p. 474) that the surrender of a lease or its merger in the reversion does not affect a sub-lease, the result being virtually to substitute the reversion to the lease for the reversion to the sub-lease, thus preserving all the rights and liabilities of the sub-lease.

Effect of oral agreement to surrender.—We have stated (*ante*, p. 475) that a surrender must be in writing; but an oral surrender or agreement to surrender may operate by way of estoppel, or may work a surrender by operation of law, as in *Fenner v. Blake* (1900, 1 Q.B. 426).

(4) *Determination by virtue of an Express Power to determine the Lease.*

A lease for a term of years often contains a power to determine it at an earlier period than that fixed. The case of a twenty-one years' lease determinable at the end of seven or fourteen years, is perhaps the most familiar instance.

Such power is usually given to the lessee; but sometimes the lessor reserves it, and sometimes the power is to be exercised by both lessor and lessee. Where it is given to the lessee, it is often further made a condition that

he shall have performed his covenants up to the time of exercising such power. The power is construed strictly, so that if the notice of intention to exercise the power is to be given in writing, a verbal notice will not suffice.

Again, if the lease provide for notice to determine the tenancy being given by the representatives of either party dying during the term, notice cannot be given to such representatives by the other party.

So, when notice is to be given by the landlord or tenant, or their respective heirs, executors or assigns, a notice given by two out of three executors is bad.

Where the lessor has the power to determine the lease on giving to the "tenant or his assigns" notice of his intention to do so, notice given to the underlessee (a mortgagee) would be bad, as such mortgagee is not an "assignee" of the tenant, even though he has substantially the whole term, a nominal reversion only being left in the mortgagor, and even though there be, as is common, a declaration of trust of such nominal reversion for the mortgagee (*Hogg v. Brooks* (1885), 15 Q.B.D. 256).

Compare the recent case of *Friary Holroyd and Co. v. Singleton* ((1899), 2 Ch. 261), in which it was held that where a lease gave the lessee, his executors, administrators, or "assigns" an option to purchase the freehold,

the option could not be exercised by the equitable assignee of the lease, *i.e.*, a person who had only agreed to buy the lease, but had not taken an actual assignment of it.

A notice to determine need not refer to the power, but it must be such as to expire with the end of the seven or fourteen years as the case may be. If no particular notice is required by the power, a reasonable notice must be given.

If a lease be granted for seven, fourteen or twenty-one years, this gives the lessee alone the option of terminating it; but if a lease for twenty-one years is made determinable in seven or fourteen years, "if the parties shall think fit," then it can only be so ended by consent of *both* parties.

Where a proper notice to determine the lease pursuant to a power is given, the lease is ended at the time fixed by the notice, and therefore a surety for the tenant would be discharged, even if the tenant continued in possession under a new agreement.

(5) *Determination by Disclaimer.*

A lease is determined by *disclaimer* where the relation of landlord and tenant is expressly repudiated, or a claim to possession of the premises is set up which is inconsistent with the continuance of such relation.

Disclaimer is not of very frequent occurrence,

and may be said to be virtually confined to cases of periodic—*i.e.*, yearly, quarterly, etc.—tenancies.

It is a disclaimer if a tenant either claims himself in opposition to the lease, or sets up a third party's title.

A disclaimer may practically operate in this way, *viz.*, if a yearly, etc., tenant disclaims, he cannot afterwards, if sued in ejectment by the landlord, plead that he has had no notice to quit, as he had, by asserting that no tenancy exists, waived the necessity of proving any such notice (see *Doe v. Wells*, 10 A. and E. 427).

A disclaimer is waived by a subsequent distress.

Even a lessee for a term of years may, in effect, disclaim the lease by taking legal proceedings inconsistent with his position as tenant, and by so doing may incur a forfeiture.

Disclaimer by trustee in bankruptcy.—See as to this *ante*, p. 458.

(6) *Determination by Forfeiture.*

A forfeiture of the lease may be incurred either by the breach of a *condition subsequent* as distinguished from a *covenant*, or by breach of covenant for the breach of which the lessor is expressly empowered to re-enter and terminate the lease.

(a) *Forfeiture on Breach of Condition subsequent.*

A condition subsequent is a condition which puts an end to an estate previously granted, whether an express power of re-entry be reserved or not. Thus, on the happening of a certain event or the doing of a particular act, the term created by the lease may be put an end to.

Forfeiture of this kind, where no express proviso for re-entry is inserted in the lease, is extremely rare nowadays, as nearly all leases contain an express power authorising the lessor to re-enter and put an end to the lease in certain events, *e.g.*, non-payment of rent or breach of covenants or conditions.

But a breach of *covenant* as distinguished from a *condition* will not entail a forfeiture unless the lease contain an express proviso for re-entry on breach of such covenant.

(b) *Forfeiture under a Proviso for Re-entry on Breach of Covenant, etc.*

This is by far the commonest case of forfeiture at the present day. A proviso for re-entry usually empowers the lessor on non-payment of rent, or the breach, non-observance or non-performance of any of the lessee's covenants or conditions on his part to be observed or performed, to re-enter and put an end to the lease, though the phraseology of the proviso is not uniformly the same. Where it

is worded as above it will extend to negative as well as affirmative covenants; but if the proviso be limited to the failure of the lessee to "perform," this will not, it seems, cover the breach of a negative stipulation (see *Hyde v. Warden*, 3 Ex. D. 32). But a proviso for re-entry on "breach" of any of the covenants will extend to negative covenants, as will a proviso for re-entry on failure to "perform and keep," or to "perform and observe" all or any of the covenants (see *Barrow v. Isaacs* (1891), 1 Q.B. 417, where Kay, L.J., doubted the correctness of the view expressed in *Hyde v. Warden* (*sup.*)).

The proviso is often made to extend to other things besides breach by the tenant of his covenants. For instance, it is common to make it come into effect on the bankruptcy or taking in execution of the tenant's interest, or on the happening of some other event. It is convenient to discuss these events as follows:—

(i.) Forfeiture for non-payment of rent.

(ii.) Forfeiture for breach of other covenants, etc.

(iii.) Forfeiture in the event of the bankruptcy of the tenant, or the happening of some other event.

(i.) *Forfeiture for Non-payment of Rent.*

The subject has always stood on a distinct footing. At common law a forfeiture for non-

payment of rent could not take place without a formal demand of the rent and very strict compliance with a number of technical rules which it is not now necessary to detail. To obviate the necessity of observing these formalities it became usual to make the proviso for re-entry on non-payment of rent within a certain number of days after it becomes due, "although no legal or formal demand be made," and sometimes "if there be no sufficient distress to be found on the premises" (see as to the construction of a proviso so worded, *Shepherd v. Berger* (1891), 1 Q.B. 597).

The necessity for a demand of the rent is, however, dispensed with by virtue of s. 210 of the Common Law Procedure Act, 1852, in the following case, viz.—Where there is half a year's rent in arrear for non-payment of which the landlord would have a right to re-enter, he may without any formal demand or re-entry serve a writ in ejectment against the tenant, and if it be proved that half a year's rent was in arrear before the writ was served, and that there was not sufficient distress to be found, *i.e.*, not to be found with reasonable diligence, or not *accessible*—to satisfy all the arrears—not merely half a year's rent, if more than that was due; and that the lessor had an express power in case of rent being in arrear to re-enter and determine the lease, then judgment and execution may be had in the same manner

as if the rent had been legally demanded and a re-entry made.

An assignee of a lease, whether by way of mortgage or not, and an underlessee are "tenants" within the meaning of the above clause.

A distress for rent, under which part of the arrears have been recovered, will not prevent an ejectment for the residue, provided such residue amounts to at least half a year's arrears without sufficient distress to satisfy them (see *Cotesworth v. Spokes*, 30 L.J. C.P. 220).

By "not sufficient distress" is meant that sufficient distress cannot be found after a reasonably diligent search, which must always first be made throughout the premises.

It has been held in the case of *Thomas v. Lulham* ((1895), 2 Q.B. 400) that a distress may be made under section 210 without being a waiver of the forfeiture—though generally speaking, a distress levied after a right of forfeiture has accrued has that effect—as such distress is necessary before the section can be made to apply.

(ii.) *Forfeiture for Breach of Tenant's Covenants.*

We have already considered (*ante*, pp. 129-249), in treating of the covenants in a lease, what constitutes a breach of any particular covenant.

In this connection the following recent cases may be referred to. A lease contained a proviso

for re-entry on breach of the tenant's covenants, one of which precluded him from assigning, underletting or parting with possession without the landlord's written consent, such consent not to be unreasonably withheld. The tenant made an agreement by letter for a sub-letting to a person who was a desirable tenant, but did not obtain the necessary consent, and gave partial possession. It was held that, inasmuch as the letter amounted to an enforceable agreement for a sub-lease, there was a breach of covenant entailing a forfeiture under the proviso for re-entry, and that, on the authority of *Barrow v. Isaacs* (1891), 1 Q.B. 417, the tenant was not entitled to equitable relief against the forfeiture (*Eastern Telegraph Company v. Dent*, 78 L.T. 713).

An assignee of the equity of redemption in the reversion to a lease, if in receipt of the rents, may, as an "assign" of the lessor, bring an action to enforce a forfeiture under a proviso for re-entry on breach of covenant (*Matthews v. Usher*, 81 L.T. 541).

(iii.) *Forfeiture in the Event of the Bankruptcy, etc., of the Tenant.*

The proviso for re-entry is often made to come into effect in the event of the tenant becoming bankrupt, or making a composition with creditors, or suffering his *interest* to be taken under an execution. An assignment of the

tenant's property to a trustee for creditors is not "making a composition" within the meaning of such a proviso.

Again, a proviso for re-entry in case of the "lessee, his executors, administrators or assigns" becoming bankrupt only extends to the bankruptcy of the tenant for the time being, and not to the bankruptcy of the original lessee after assignment of the lease (see *Smith v. Gronow* (1891), 2 Q.B. 394).

Filing a petition "in liquidation" (e.g., in a lease made before the Bankruptcy Act, 1883) would include the filing of a bankruptcy petition under the Act of 1883 (*ex parte Gould re Walker*, 13 Q.B.D. 454).

Under a proviso for re-entry in a lease to a company, in case the company should go into liquidation whether compulsory or voluntary, a forfeiture is incurred if the company goes into voluntary liquidation, though only with a view to re-construction (*Horsey Estate v. Steiger* (1898), 2 Q.B. 259).

A lease contained a proviso for re-entry in case the tenant should do or suffer any act or thing whereby the demised premises should directly or indirectly, by operation of law or otherwise, become or be rendered liable to become vested, either for the whole or any part of the term granted, in any person other than the lessee.

It was held that a sub-letting on a yearly tenancy was an act whereby the premises became vested for part of the term in the sub-tenant within the meaning of the proviso, and that a forfeiture had been incurred (*Dymock v. Showell's Brewery Company*, 79 L.T. 329).

Operation of a forfeiture.—Where a cause of forfeiture has arisen, the lessor must do something to show plainly that he avails himself of it; because the forfeiture does not *ipso facto* render the lease *void*, but *voidable* only at the instance of the landlord—*i.e.*, the legal reversioner—even though the proviso in terms states that the lease shall be null and void in the particular event.

It is clear that the *tenant* cannot avail himself of the forfeiture to avoid the lease. Moreover, notwithstanding the forfeiture, the tenant remains liable for breaches of covenant which have occurred previously to the date of the forfeiture.

As regards underleases, there is a distinction between a voluntary and an involuntary termination of the lease. We have already seen (*ante*, pp. 474, 479) that a lessee cannot, by surrendering his lease, prejudice the underlessee; but, if the lease is determined by forfeiture, it involves the destruction of all underleases.

Waiver of forfeiture.—A forfeiture may be waived by some subsequent act on the part of the landlord having notice of the forfeiture;

the rule being that if the reversioner with knowledge that a forfeiture has been incurred does any act whereby he acknowledges the continuance of the tenancy at a later period, he thereby waives the forfeiture. But it is essential to the waiver of a forfeiture (1) that the *reversioner should know* of the forfeiture; (2) that he should do *some positive* act to show a waiver by him of his right to enforce the forfeiture. Therefore, if he is merely a passive witness of a breach of covenant, etc., entailing a forfeiture, such "lying by," as it is called, does not amount to a waiver, even if he knows the tenant has been spending money on the premises while the breach has been going on. There are various acts which are equivalent to a waiver, *e.g.*, demand or acceptance by the landlord of rent accruing due *after* the forfeiture. Even acceptance under protest, or "without prejudice" to his right to maintain the forfeiture, will be a waiver by him (see *Croft v. Lumley*, 5 E. and B. 648)—a rule applicable, it seems, to agreements for leases, which, if specifically enforceable, are to be regarded as equivalent to leases (see *Strong v. Stringer* (1889), 61 L.T. Rep. 470). But subsequent acceptance of rent accrued due *before* the forfeiture is, of course, no waiver of such forfeiture.

Again, the landlord waives a forfeiture by *suing* for rent subsequently accruing, or by *distraining* for it.

A distress waives a forfeiture up to the very day on which it is levied, and not merely up to the day when the rent distrained for was due ; whereas, acceptance of rent accruing after forfeiture would only be a waiver up to the day when the rent accrued due. The reason for the difference is a very technical one, which it is not necessary here to discuss.

We have already seen that a distress for rent does not prevent the landlord enforcing a forfeiture under s. 210 of the Common Law Procedure Act, 1882 (see *ante*, pp. 486-7).

Again, after proceedings in ejectment have been taken a subsequent distress is no waiver, though it may amount to a trespass (see *Greenwood v. Moss*, L.R. 7 C.P. 360). Acceptance of rent is not a waiver, though it may be, under certain circumstances, evidence of a new tenancy on the terms of the old (see *Evans v. Wyatt*, 43 L.T. 176), and a subsequent non-payment of rent may also be set up as a cause of forfeiture.

A notice to quit, or an action for breach of the covenant which is the forfeiture alleged, would be other acts of waiver.

Waiver in case of continuing breach.—A waiver of a breach of covenant, if such breach is of a *continuing* nature, *e.g.*, of a covenant to keep in repair, or insured, only waives the breach up to the time when the act of waiver takes place, it does not prevent a forfeiture for a continuance

of the breach after that day. If, for instance, the landlord accept rent pending a notice to repair, he does not thereby waive his right to enforce a forfeiture for the subsequent breach caused by non-compliance with such notice; and even if he should accept rent due after the notice has expired, he might still eject if the premises continued thereafter out of repair.

In this connection the recent case of *Penton v. Barnett* (1898) 1 Q.B. 276 is instructive as showing the operation of a waiver in the case of a continuing breach. There premises were demised by a lease which contained a general covenant to keep in repair. In 1896 the premises were out of repair, and on September 22 the landlord gave the tenant notice under s. 14 of the Conveyancing Act, 1881 (see as to this, *post*, p. 500), to do certain repairs within three months. The notice was not complied with, and on January 14, 1897, more than three months after the notice, the landlord commenced proceedings to recover possession, also claiming rent up to December 25, 1896. The premises were in the same state of disrepair. The objection was taken that by claiming the rent up to December 25, that is, rent accruing due after the notice, there had been a waiver of the forfeiture. But it was held that the claim for rent was at most an election to treat the defendant as tenant up to December 25, and that inasmuch as between

that date and January 14 — the date of the writ being issued—the premises were in the same state of disrepair as they had been in previously, there was a breach of the covenant between these dates—the breach being a continuing one—in respect of which the landlord could claim to enforce the forfeiture. It was also held that the breach being a continuing one, no new notice was required under s. 14 (see as to this, *post*, p. 500) in respect of the non-repair after the expiration of the time specified in the notice.

In the case of breach of a covenant such as that against underletting, even if the covenant be not to underlet, or “permit any other person to occupy it” as in *Walrond v. Hawkins* (44 L.J. C.P. 116); yet the breach is not a continuing one, and a waiver by acceptance of rent and distress operates during the existence of the under-tenancy. And where there is a covenant against particular trading, if the landlord accept rent with knowledge of the breach, *e.g.*, that there is a third person in possession carrying on the prohibited trade, the waiver would hold good during the tenancy of such person (see *Griffin v. Tomkins*, 42 L.T. 359).

If the landlord allow his tenant to spend money on improvements contrary to a covenant against altering the premises, this may be evidence of a consent on his part to such alterations, and therefore of a waiver.

A forfeiture may be *suspended*, though not waived, *e.g.*, by allowing further time for executing repairs pursuant to a notice.

Operation of waiver.—At one time there was a difference between the effect of an express waiver, and that of one implied by some act, such as receipt of rent, etc. ; the latter only waiving the particular breach, whereas the former amounted to a general waiver of all other breaches. Now, however, an express waiver by the landlord of the benefit of any covenant or condition in any one particular instance, will not extend to any instance, or any breach of covenant or condition, other than that to which such waiver specifically relates, and is not to be deemed a general waiver of the benefit of such covenant or condition, unless an intention to that effect appears (23 and 24 Vict., c. 38, s. 6).

Again, a right of forfeiture is not lost by giving a license to commit a breach of a covenant or condition, such license, unless otherwise expressed, only extending to the permission actually given, or to any specific breach authorised or permitted, and not preventing proceedings for any subsequent breach, unless otherwise specified in the license (22 and 23 Vict., c. 35, s. 1).

Waiver by deed.—Where a forfeiture arises on a lease under seal an express waiver of such forfeiture should be by deed, or even where the

lease is not by deed, if there be no consideration for the waiver.

Lessee to bear cost of express waiver.—Where the lessee requests the lessor to waive a right of re-entry or forfeiture arising out of a breach of covenant, etc., and the lessor waives it in *writing under his hand*, the lessor is now entitled to recover as a debt due to him from the lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor, or valuer, or otherwise in relation to such breach (Conveyancing Act, 1892, s. 2).

Relief against Forfeiture.

(1) *Relief against Forfeiture for Non-payment of Rent.*

A tenant against whom an action of ejectment for non-payment of rent has been commenced may at any time before execution has issued against him get the proceedings set aside on payment of the debt and costs; but after execution has issued he cannot apply for relief against the forfeiture, except within six months after the date when such execution issued (see Common Law Procedure Act, 1852, s.s. 210-212; Common Law Procedure Act, 1860).

By s. 1 of the latter Act, summary relief may be obtained under these enactments, at any stage of the proceedings, on application by summons to a judge in chambers.

Although no application for relief can be entertained after the expiration of the six months, relief within that time is not a matter of course, but is discretionary with the Court. It will be refused if the tenant has been guilty of unreasonable delay in applying (as in *Stanhope v. Haworth*, 3 T.L.R. 34—where the tenant only applied just before the expiration of the six months, and the landlord had, after incurring great expense in maintaining the premises, meanwhile agreed to re-let them to a new tenant).

Where an underlessee—*e.g.*, a mortgagee by demise—applies for relief against a forfeiture for non-payment of rent by the original lessee, he must make the latter a party to his application before he can get relief under the Common Law Procedure Act (*Hare v. Elms* (1893), 1 Q.B. 604).

Relief where no ejectment action brought.—It has been decided in the case of *Howard v. Fanshawe* ((1895), 2 Ch. 581) that, even where no proceedings in ejectment have been taken, but the landlord has peaceably resumed possession under his proviso for re-entry on non-payment of rent, the tenant is entitled to relief against the forfeiture, and to an order under s. 212 of the Common Law Procedure Act declaring that he may hold and enjoy the demised premises according to the lease made thereof without any new lease. The right to relief in such a case is

a species of property—being in effect a right to get back the lease—which would pass to the trustee in bankruptcy of the tenant, from whom again it might be assigned to a purchaser.

It is doubtful whether the application in such a case must be within six months after the resumption of possession by the landlord (see *Howard v. Fanshawe* (*supra*), per Stirling, J., at p. 589).

Whether relief discretionary.—Although, as above stated, the Court has a discretion as to granting relief, it seems that where the applicant does all that he is required to do by the Common Law Procedure Acts, and no new interests have been created which would render it inequitable to grant relief, he is practically entitled to it as a matter of right (see per Lord Esher, M.R., in *Newbolt v. Bingham* (1896), 72 L.T.853); and in the case of a *mortgagee* of a lease (whether by assignment or sub-demise appears to be immaterial), s. 210 of the Common Law Procedure Act, 1852, provides, in effect, that he shall be entitled to relief if within the period allowed—viz., six months after execution—he pays all rent in arrear and all costs and damages sustained by the lessor, and performs all the lessee's covenants and agreements.

Accordingly in *Newbolt v. Bingham* (*sup.*) it was held that a mortgagee of a lease by sub-demise was, according to the settled equity

practice, entitled to relief under the above proviso, unless a right in some third party had accrued between the date of the judgment and the application for relief.

No relief under Conveyancing Acts.—The provisions in the Conveyancing Act with regard to relief against forfeiture do not apply to the case of forfeiture for non-payment of rent, which, as already stated (*ante*, p. 485), has always been treated on a distinct basis.

(2) *Relief against Forfeiture in other Cases.*

Apart from the Conveyancing Acts, relief against forfeiture, other than for non-payment of rent, could only be given in case of breach of covenant to insure, and in some very exceptional instances on technical grounds recognised in equity courts.

Provisions of Conveyancing Acts.—Practically in all cases other than of forfeiture for non-payment of rent, or breach of covenant not to assign or underlet, relief is now to be had only under the provisions of the Conveyancing Acts, 1881, 1892.

The gist of these enactments is that, before a landlord can enforce a forfeiture for a breach of certain covenants or conditions in the lease, he must give the tenant the opportunity of remedying the breach and of making some compensation therefor, and that only in the event of the tenant failing to remedy the

breach and to make the compensation can the forfeiture be enforced—in which event, however, the landlord will be entitled to be recouped by the tenant the costs of employing a solicitor or surveyor with reference to any breach leading to the forfeiture under the conditions to be presently mentioned (see *post*, p. 506).

As the enactments are to be construed somewhat strictly, it will be necessary to consider them in detail. The sections material to be noted are the following:—

By s. 14 of the Conveyancing Act, 1881, before a right of forfeiture under any proviso or stipulation for breach of any covenant or condition in a lease can be enforced by the landlord, he must serve the tenant with a written notice specifying the particular breach of which he complains, and, if the breach is capable of remedy, requiring the tenant to remedy it, and in any case requiring him to make a money compensation. If the lessee fail within a reasonable time to remedy the breach, if capable of remedy, and to make a reasonable money compensation to the satisfaction of the lessor, then the latter may proceed to enforce his right of forfeiture in the usual way (see sub-s. 1).

By sub-s. (2) where a lessor is proceeding by action or otherwise to enforce a right of forfeiture, the lessee may in the lessor's action, or in any action brought by himself, apply to the

Court—that is, the High Court—for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the grant of an injunction to restrain any like breach in future, as the Court in the circumstances of each case thinks fit.

What included in term "lease," etc.—"Lease" here includes underlease—*i.e.*, as between the parties to it (see *Burt v. Gray* (1891), 2 Q.B. 98, but see Conveyancing Act, 1892, s. 4)—and lessee includes underlessee, and the heirs, executors, administrators and assigns of a lease; and lessor includes underlessor, and the heirs, executors, administrators, and assigns of a lessor (sub-s. 3). An assignee of the equity of redemption in a reversion to a lease is an "assign" within the meaning of this subsection (see *Matthews v. Usher*, 81 L.T. 542).

A lease also includes an agreement for a lease or underlease, where the intended lessee or underlessee is in a position to claim specific performance of it, *i.e.*, independently of the breach complained of, because the commission of that breach would in itself, generally speaking, disentitle him to specific performance (see Conveyancing Act, 1892, s. 5; and *Strong*

v. *Stringer*, 61 L.T. 470; *Swain v. Ayres*, 21 Q.B.D. 289; *Coatsworth v. Johnson*, 55 L.J. Q.B. 220).

Form and sufficiency of notice.—The notice to be given must specify with reasonable certainty what the lessor requires the tenant to do, what particular breach he has been guilty of (see *Fletcher v. Nokes* (1897), 1 Ch. 271; *re Serle* (1898), 1 Ch. 652; also *Penton v. Barnett* (1898), 1 Q.B. 271—where it was held that, in case of a continuing breach, a second notice need not be served in respect of non-repair existing after the expiration of the notice).

A notice specifying particular breaches of distinct covenants will not entitle the lessor to bring an action to enforce a forfeiture if it is insufficient as to the alleged breach of any one covenant (*In re Serle, supra*).

The notice need not specify the repairs required in each particular house, but is sufficient if it gives in copious detail every repair that may be required according to the condition of each house. The tenant must, on knowing what sort of work is required to be done, do it where it is wanted, and distinguish the work which he is legally bound to do from that which does not fall upon him according to law. The fact that the notice includes things which he is not bound to do will not invalidate it (*Matthews v. Usher*, 81 L.T. 542).

The notice need not claim compensation if

none be wanted; but the lessor may, if he pleases, insist on compensation in money instead of allowing the lessee to remedy the breach (*Lock v. Pearce* (1893), 2 Ch. 271).

The notice may now, under s. 2 of the Conveyancing Act, 1892, require the lessee to make compensation in respect of the costs of the lessor's solicitor and surveyor in reference to a breach giving rise to a right of re-entry or forfeiture (see as to this, *post*, p. 506).

Cases under s. 14 of 1881 Act.—Relief cannot be granted under s. 14, sub-s. 2, after the landlord has actually re-entered (*Rogers v. Rice* (1892), 2 Ch. 170).

The Court has an absolute discretion to refuse relief, even though no notice has been given (*Scott v. Matthew Brown and Co.*, 52 L.J. 746).

In *Gentle v. Falkner* (68 L.J. Q.B. 848), where it was held that a declaration by a tenant to stand possessed of a lease upon trust for creditors was a breach of a covenant against assigning, it was also decided that in such a case no notice under s. 14 (1) of the Conveyancing Act, 1881, was necessary before enforcing a forfeiture for such breach, as the case was within the exception in sub-s. (6) (i) of that section.

Relief of underlessees.—In the case of a breach of covenant in a lease out of which an underlease has been granted, the forfeiture of the

lease would formerly, as we have already shown, have involved that of the underlease, thus working considerable hardship to an innocent underlessee. To relieve the latter in such a case, the Conveyancing Act, 1892, s. 4, now empowers the sub-tenant to apply to the Court for an order vesting in him the demised property for the whole term of the lease, or any less term, upon such conditions as the Court may think proper. These conditions are that the under-tenant may have to execute a deed or document, and they may require payment of rent, costs, expenses, damages, compensation, or giving security. The sub-tenant may either apply for this vesting order in any action brought by the superior landlord to enforce the forfeiture of the lease, or he may institute proceedings for that purpose on his own account. The under-tenant cannot, however, require a lease to be granted to him for any longer term than he had under the original sub-lease.

Limitations on relieving enactments.—It must be carefully borne in mind that the generality of these relieving enactments is considerably qualified by the provisions which exempt from their operation certain kinds of covenants and conditions. Thus, they do not extend to a covenant or condition against assigning or underletting, or parting with possession, or disposing of the land leased (Conveyancing Act,

1881, s. 14, sub-s. 6). In the event of a breach of any such covenant or condition involving a forfeiture of the lease, the sections give no relief to the tenant or under-tenant. Again, they do not apply to a condition for forfeiture of the lessee's interest on his bankruptcy, or on his interest being taken in execution, after the expiration of one year from the date of the bankruptcy or taking in execution, and provided the lessee's interest be sold within such one year (Conveyancing Act, 1881, s. 14, sub-s. (6) ; Conveyancing Act, 1892, s. 2, sub-s. 3)—that is to say, relief against forfeiture may be given under such circumstances within the year, but not after ; and further, in no case will relief be given against forfeiture under a condition of this kind, in a lease of (a) agricultural or pastoral land ; (b) mines or minerals ; (c) a house used or intended to be used as a public-house or beer-shop ; (d) a house let as a dwelling house with the use of any furniture, books, works of art, or other chattels, not being in the nature of fixtures ; (e) any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood, to the lessor, or to any person holding under him (Conveyancing Act, 1892, s. 2, sub-s. 3).

Again, no relief will be given against forfeiture on breach of a covenant or condition in

a *mining* lease for allowing the lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the workings thereof (Conveyancing Act, 1881, s. 14, sub-s. (6), ii.). We have already stated that the relieving enactment does not apply to the case of forfeiture or re-entry on non-payment of rent, the law relating to which and the relief that may be given in respect thereof having been already considered (see *ante*, pp. 485-7 ; 496-9).

Compensation as a condition of relief.—It will be remembered (see *ante*, pp. 499-500) that one of the conditions on which a tenant may be relieved from forfeiture is that he is to make a “reasonable compensation to the satisfaction of the lessor” for the breach of covenant complained of. This compensation may now include all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor, valuer or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture, which, at the request of the lessee, is waived by the lessor by writing under his hand, or from which the lessee is relieved under the provisions of the Conveyancing Act, 1881, or the Conveyancing Act, 1892 (see Conveyancing Act, 1892, s. 2 (1)).

In such case the lessor is entitled to recover such costs and expenses as a debt due to him from the lessee, and in addition to any damages,

and he may sue for them in an independent action (Conveyancing Act, 1892, s. 2, sub-s. 1), or it seems he may be allowed them as a condition of any order relieving the tenant under the Conveyancing Act, 1881, s. 14, sub-s. (2) (see *Bridge v. Quick* (1892), 61 L.J. Q.B. 375). "Lessee" here does not include "underlessee"—that is, as between lessor and underlessee, between whom there is no privity either of estate or of contract. But, of course, as between underlessor and underlessee the provisions above mentioned would apply (see *Nind v. Nineteenth Century Building Society* (1894), 2 Q.B. 226).

Construction of section 2 of 1892 Act.—If the lessee complies with the notice within a reasonable time, there is no enforceable right of re-entry or forfeiture, and therefore nothing against which the lessee requires to be relieved (see per Davey, L.J., in *Nind v. Nineteenth Century Building Society* (1894), 2 Q.B. 226, 233).

If there is no enforceable forfeiture there can be no "waiver" by the lessor, and therefore, if the lessee remedies the breach, and makes the compensation required by s. 14 of the Act of 1881, he cannot be sued for these costs.

"If, on the other hand, the lessee fails to fulfil the obligations imposed by that section (viz., s. 14), and an enforceable right of re-entry or forfeiture arises, the lessor seems to be in a

dilemma, for if he waives the right of re-entry or forfeiture, although he may recover the costs and expenses mentioned in the section (s. 2 of Act, 1892), he loses the power of compelling the lessee to remedy the breach of covenant, and if he insists on the breach being remedied in the first instance, there ceases to be an enforceable right capable of being waived so as to give rise to the statutory cause of action" (Clerke and Brett's Conveyancing Acts, 4th ed., p: 190).

As already mentioned (*ante*, p. 507), "Lessee," in sub-s. (1) of s. 2 of the Act of 1892, does not include "underlessee," so as to give the lessor the right to sue the underlessee (*Nind v. Nineteenth Century Building Society* (1894), 2 Q.B. 226).

Relief discretionary with the Court.—It should be noted that the granting of relief under s. 14 of the Act of 1881, is discretionary with the Court, who may take into consideration the proceedings and conduct of the parties under the foregoing provisions, and all the other circumstances of the case (s. 14, sub-s. 2).

Apart from these Acts, where there are breaches of several covenants in a lease, some only of which can be relieved against, the Court will not restrain the lessor from enforcing his right of forfeiture (see *Nokes v. Gibbon*, 3 Drew, 681).

CHAPTER XI.

NOTICE TO QUIT.

Notice to quit is a mode of terminating a tenancy by one party alone, and is practically confined to what are called periodic tenancies, *i.e.*, yearly, quarterly, etc., tenancies. No notice to quit is or can be required in case of tenancies for a fixed term, except where the lease gives either party the power to terminate it sooner, when a reasonable notice must be given, or such notice as is specially stipulated for (see as to this *ante*, p. 480). And in all cases the parties may agree to dispense with notice where otherwise necessary. And, of course, no notice to quit is necessary in the case of persons in possession as trespassers, or in case of a tenant holding over after the end of his term, or in cases where employees are allowed to occupy premises solely in connection with their employment. Nor where a tenant under lease from a person whose interest is of uncertain duration is allowed in lieu of his common law right to emblements to remain in possession until the end of the current year, is any notice to quit at the expiration of such time necessary (see as to this *post*, Chap. XIII.).

Tenants of mortgagors under yearly tenancies or leases for terms not exceeding twenty-one years, whose tenancies would not, apart from the Conveyancing Act, 1881 (see *ante*, pp. 29-33), be binding on the mortgagees, are now by the Tenants Compensation Act, 1890, entitled to at least six months' notice before they can be deprived of possession by the mortgagees otherwise than in accordance with the terms of their contracts with their lessors, the mortgagors.

Some notice necessary in all periodic tenancies.—In the case of all periodic tenancies some notice to quit must be given by either party; but, except with regard to a tenancy from year to year, there does not appear to be any very settled rule as to what length of notice is necessary. Notice is necessary as well in case of an express tenancy from year to year as of one implied by law.

Notice by express agreement of the parties.—The parties to a periodic tenancy can stipulate for any length of notice they choose to agree upon, provided they do not restrict the lessor's right to determine it by giving the regular notice, such a stipulation being void if it is repugnant to the nature of the demise. Thus, a yearly tenancy, by which the tenant is not to be disturbed so long as he pays his rent, would be invalid, as amounting in effect to a tenancy for life, so long as the rent is paid. So a yearly tenancy determinable on giving two years'

notice would be void for repugnancy, six months' notice being the recognised length of notice required to end such a tenancy, though there is nothing to prevent the parties agreeing for a shorter notice being given. If six months' notice be agreed upon, this *prima facie* means a lunar month, unless *calendar* month be expressly mentioned.*

In reckoning the length of a notice to quit the time is calculated exclusive of the day on which it is given, except in case of a "customary" half-year's notice.

Length of notice required.—Apart from agreement or local custom a yearly tenancy requires half a year's notice on either side to determine it; in tenancies for a less period—*e.g.*, quarterly, monthly, or weekly—a reasonable notice, but not exceeding the period of the tenancy itself, must be given. It has been said that a quarterly tenancy requires a quarter's notice, but this can hardly be said to be settled law. In case of monthly or weekly tenancies not more than a month's or week's notice can be required (see *Bowen v. Anderson* (1894), 1 Q.B. 164).

A tenancy for one year certain and so on from year to year unless or until the tenancy be determined by either party giving to the other twenty-eight days' notice in writing, such notice to expire at any period of the year without reference to the date of entry, the date of

* It is otherwise in construing statutes.

agreement, or the commencement of the tenancy, cannot be determined by notice during the first year (*Cannon Brewery v. Nash*, 77 L.T. 648).

Notice in case of agricultural tenancies.—In the case of an agricultural tenancy from year to year—being a holding to which the Agricultural Holdings Act, 1883, applies (as to this see s.s. 54, 61, *post*, Chap. XIII.)—in lieu of half a year's notice, which is by law required in case of ordinary yearly tenancies, a year's notice expiring with any year of the tenancy must now be given ; but if the parties agree by the contract of tenancy that it shall be determinable on six months' notice the above provision will not apply (see *Barlow v. Teal*, 15 Q.B.D. 501).

When notice must expire.—Whatever the notice, it must expire at the time of the year when the tenancy began.

If the tenancy began on any of the usual quarter days, viz., March 25, June 24, September 29, and December 25, the notice may expire at any of those days, even though, if reckoned by days, it be not exactly half a year's notice. But if the tenancy began at any other time a full half-year's notice, reckoned by days (viz., 182), must be given to expire at the actual date of commencement of the tenancy.

The notice to quit must expire with the last day of the period when the tenancy began ; and even if less than six months' notice is

stipulated for by the lease, it must still expire at the same period, unless the contract expressly or impliedly provides for it being given at any time.

If the notice is invalid according to the above rule the defect cannot be cured by mere acquiescence on the part of the person to whom it is given, unless the circumstances are such as to amount to a surrender; nor is a person bound by his own notice, if invalid, though accepted as valid by the other party.

Where a yearly tenancy is created by a holding over after the end of a term, it is deemed to commence not from the expiration of the lease but on the anniversary of the day when it commenced. But where the tenant of a mortgagor whose lease is not binding upon the mortgagee is required by the latter to pay his rent to him under a notice asserting his title paramount, the yearly tenancy thus created is deemed to commence with the period for which rent was first paid to the mortgagee (see *Corbett v. Plowden*, 25 Ch. D. 678).

Reverting to the general rule, it is immaterial when the tenancy commences, the notice must expire on the first or some succeeding anniversary of that day.

But where, as often happens, the tenant goes in in the middle of a quarter, and agrees to pay a proportion of the rent for that quarter, and afterwards his rent quarterly on the regular

quarter days; or where, without such agreement, the first payment of rent is to be made on the next quarter day but one following his entry, the tenancy will be considered to commence on the first of such quarter days, and notice must therefore expire with such day.

A notice to quit at noon of the day on which the notice expires is bad, the tenant being entitled to stay till midnight of such day. A notice to quit may provide that the tenant shall have a reasonable time after its expiration for removing goods from the premises, and a similar indulgence may be implied in some cases by custom.

By whom notice is to be given.—Notice to quit may be given either by landlord or tenant. If the notice is given on the part of the landlord it must be by the legal reversioner or his authorised agent. In case of joint tenants*—*e.g.*, trustees or executors—in the absence of special stipulation, notice by one is sufficient; and where tenants in common join in a demise, one of them may give notice on behalf of all, otherwise one of several tenants in common can only give a notice *qua* his own share, unless authorised to act for the others.

Where the notice is given by an agent he must give it as agent, unless he is a general agent, that is, entrusted with the general

As to the meaning of joint tenants and tenants in common, see *ante*, p. 421.

management of an estate, when he may give the notice in his own name.

If not authorised the notice may be adopted by the landlord at any time before the six months or other requisite period of the notice begins to run, *e.g.*, if an unauthorised notice be given on June 22, to expire December 25, the landlord may ratify it at any time before June 24, but not after, as in that case the tenant would not have six months' notice, the notice being valid only from the time when it becomes the notice of the landlord (see per Littledale, J., in *Doe v. Walters* (1830), 10 B. and C. 633).

Notice *by the tenant* should be given by the legal owner of the lease, *i.e.*, the original tenant or his assignee, or legal representative, and not by an under-tenant. The authorised agent of the tenant may give the notice.

To whom notice is to be given.—Notice *by the landlord* must be given to the *immediate* tenant, whether lessee, assignee or legal representative of either, but not to an under-tenant, because there is no privity between lessor and under-lessee. A notice addressed to the tenant, but served on the under-tenant on the premises, is bad. But it may be given to a person in occupation, who, it seems, is presumed to be the lessee's assignee, or in case of his death to be his legal representative, in the absence of proof to the contrary.

The notice should be directed to the tenant, and may be delivered to his solicitor, or agent, or to some person whose duty in the ordinary course would be to deliver it to the tenant.

The notice should be given to the *immediate* reversioner, or his assignee, or legal representative, or to the authorised agent of the landlord. But a mere collector of rents has no authority as such to receive a notice to quit.

Form of notice.—The notice need not be in writing, and if, as is usual and proper, it is in writing, no particular form is necessary; it is sufficient if it state that the tenant is required, or, as the case may be, that the tenant intends to give up all the demised premises at the proper time.

Notice must be certain.—The notice must be *certain*, and not ambiguous or conditional; but an absolute notice to quit by the landlord may, it seems, be accompanied by an option to continue tenant on some other terms (see *Ahearn v. Bellman* (1879), L.C.4 Ex. D. 201). Compare *Bury v. Thompson* ((1895), 1 Q.B. 696), where a tenant had an option to determine his lease, which was for twenty-one years, at seven or fourteen years, on giving six calendar months' notice of his intention. He wrote a letter, which was in effect a notice to determine at the end of seven years, unless his rent was reduced. The Court held, following *Ahearn v. Bellman* (*supra*), that this amounted to a

distinct intimation that he would not stop upon the terms of the existing lease, and was therefore a good notice.

The landlord may accept a notice insufficient in point of length if it is clear that he informs the tenant that he takes the notice as a proper one, and means to accept it (see *General Assurance Company v. Worsley* (1895), 64 L.J. Q.B. 253).

The notice should describe the premises with reasonable accuracy, but a misdescription is not fatal if the other party is not thereby misled.

It must extend to *all* the premises, if it refer to *part* only it is bad.

But in the case of agricultural holdings, s. 41 of the Agricultural Holdings Act, 1883, allows the landlord of a yearly tenant to give the tenant notice to quit as to part of the holding, if given with a view to the use of the land for the erection of labourers' cottages, the providing of gardens for labourers, the planting of trees, the working of coal or other minerals, or the opening of mines, or the construction of works or buildings to be used in connection therewith, the obtaining of brick earth, gravel or sand, the making of a watercourse or road, or other purposes therein enumerated; in which event the tenant is to be entitled to a proportionate reduction of rent, and is to have the same right of compensation as to such part as he

would have in case of a notice to quit the entire holding. In such a case, the notice must state the object for which the part is to be quitted. Moreover, the tenant has the option, within twenty-eight days after service of such notice, of serving the landlord with a written notice that he accepts the notice as a notice to quit the *entire* holding, to take effect at the expiration of the then current year of tenancy, and the notice to quit shall have effect accordingly.

Notice should state time of expiration.—The notice must state the proper time when it is to expire, though it need not state the particular day. It is sufficient if it be a notice to quit, *e.g.*, at the expiration of the “term for which the tenant holds,” or at the expiration “of the present year’s tenancy,” or even it seems at the expiration of “the current year,” though there are obvious objections to the latter expression.

Alternative notice may be good.—A notice to determine a yearly tenancy from Lady Day to Lady Day, dated and served on March 24, requiring the tenant to quit on June 24, 1898, or at the end of the current year’s tenancy, although a bad notice as regards June 24, has been held good as meaning a notice to quit on March 25, 1899, and not a one day’s notice (*Wride v. Dyer* (1900), 1 Q.B. 23).

If the date of the commencement of the tenancy is unknown, a particular quarter day

should be named for the expiration of the notice. A notice by the landlord in the following form, viz. :—"At the expiration of the current year of your tenancy which shall expire next after the end of one half year from the service of this notice," has been held good. The point is not often likely to arise.

A tenancy is not affected by a mere agreement for an increase or decrease in the rent during the currency of a tenancy ; therefore, a notice to quit given after receipt of such increased or reduced rent, as the case may be, must be made to expire at the time when the tenancy originally commenced.

Notice in case of implied yearly tenancy.—In case of a yearly tenancy implied by holding over after the end of a term, the tenancy will be deemed to have commenced at the same time of the year as the original term, so as to fix the date of giving notice to quit.

But where a yearly tenancy is implied by entry and payment of rent under an inoperative lease or agreement for a definite period, such implied yearly tenancy will expire without notice at the end of the term intended to have been created, this being one of the provisions of such lease or agreement which are applicable to a yearly tenancy (see Foa, L. and T., 2nd ed., p. 478-9).

The time of quitting mentioned in the notice

should be correct with reference to the date of the notice.

A notice to quit need not be in writing, nor, if in writing, need it be attested.

Service of notice.—The notice should be *served* at least half a year before the time of quitting, though it may be dated before. We have already shown (*ante*, p. 512), that a “customary” half-year’s notice may be given where the tenancy commenced at one of the ordinary quarter days, though such half year be less than the hundred and eighty-two days which legally constitute a half year.

The notice need not be personally served. A landlord’s notice may be left on the demised premises with the wife or servant of the tenant, or some person whose duty it would be to deliver it to the tenant. Even putting a notice under the door or through the letter box would be good, if it be proved that the tenant had it before the six months began to run.

The notice may be served by post; and if posted so as to be delivered in due time will be presumed to have been duly delivered, though this presumption may be rebutted by proof that in fact it was not delivered in time. A notice is considered to have been given on the day on which it was delivered, and not on the day on which it was posted, unless in the ordinary course it should have been delivered on that day.

Service on corporations.—Where the person to be served is a corporation, it is sufficient to serve the notice on one of its officers, or in the case of a company on its secretary, or if there be no secretary, on one of the directors.

Other points as to service.—Service on one of several joint tenants is *prima facie* sufficient.

With regard to agricultural tenancies it is not certain whether s. 28 of the Agricultural Holdings Act, 1883, authorises a notice to quit to be served by post.

A notice to quit may be served on Sunday.

Waiver of notice.—A notice to quit can only be waived by the consent of both parties, either express or implied.

Payment and acceptance of rent due after the expiration of a notice to quit may operate as a waiver; and where a tenant remained in possession after the expiration of the notice, a distress for subsequent rent will have the same effect as acknowledging the continuance of the tenancy.

A demand of subsequent rent is not in itself a waiver of the notice, but may be some evidence of intention to waive. In *Keith, Prowse and Co. v. National Telephone Company* (1894), 2 Ch. 147, a demand of rent for one day beyond the time when the tenancy was determined pursuant to notice, was held to be an affirmation of the tenancy beyond that time, and therefore to be a waiver. In these cases it

must be taken that the other party impliedly assents to the waiver.

Subsequent receipt of, or distress for, rent due *before* or on the expiration of a notice to quit does not amount to a waiver.

A second notice, again, is an implied waiver of a former notice, unless the second one is bad ; but a notice given on the expiration of a notice to the tenant to quit within a certain period, or pay double rent or double value, is not a waiver of the prior notice.

Where the tenant holds over after the expiration of a notice to quit by the landlord, the latter cannot waive his notice and distrain for subsequent rent ; but if the tenant holds over after a notice to quit given by himself has expired, he may be distrained by the landlord under 11 Geo. II., c. 19, s. 18.

CHAPTER XII.

MODE OF RECOVERING POSSESSION OF THE PREMISES.

It is not intended here to do more than indicate the outlines of the procedure by which the landlord may recover possession of the premises. For detailed information as to this reference must be made to the regular practice books.

The following general observations may, however, not be out of place.

1.—*Peaceable Resumption of Possession.*

Where the landlord is entitled to recover possession, *i.e.*, on termination of the tenancy, whether naturally or otherwise, he may, if he can, resume possession peaceably without the necessity of having recourse to legal proceedings; but he must in some cases give the tenant notice so as to enable him to save the forfeiture (see *ante*, p. 500).

The resumption must be peaceable, or an indictment for forcible entry might be preferred against the landlord. And an agreement in a lease giving the landlord the right to take possession, if necessary, by force would be null and void.

But though a forcible re-entry would be an offence, it would give the tenant no right of action against the landlord, except for actual personal injury or damage thereby incurred.

2.—*Proceedings in Ejectment.*

The ordinary mode of recovering possession of the premises would be by action of ejectment, or as it is now termed, an action for the recovery of land. There are various forms of this action, according to the circumstances under which the right to possession has accrued to the landlord.

(a) *Proceedings under the Common Law Procedure Acts.*

Section 210 of the Common Law Procedure Act, 1892, giving the landlord the right to obtain judgment and execution in case of forfeiture for non-payment of rent where half a year's rent is in arrear, and no sufficient distress is to be found, has been already referred to (see *ante*, p. 486).

The other provisions of the same section, and those of ss. 211-212, and s. 1 of the Common Law Procedure Act, 1860, which deal with the method by which the tenant may be relieved against forfeiture in such cases, have also been mentioned (see *ante*, pp. 496-8).

Section 213 of the Common Law Procedure Act, 1852, also provides a special procedure for ejecting a tenant who *holds over* after his

tenancy has expired or has been determined by a notice to quit. This, however, only applies to cases where there is a lease or agreement *in writing* for a term certain, or from year to year, and *where there has been a written demand of possession* by the landlord or his agent.*

Section 214 of the same Act also empowers a landlord in an action of ejectment to recover *mesne profits*—i.e., the profits of the land demised which should or might have accrued between the day when the tenant's interest expired or was determined and the time of the verdict in the action, or some specified preceding day.

(b) *Summary Procedure under R.S.C., O. XIV.*

Sections 213, 214 of the Common Law Procedure Act, 1852, are now virtually superseded by the procedure contained in Order XIV. of the Rules of the Supreme Court, 1883, which enables a landlord to obtain summary judgment for the recovery of land against a tenant or persons claiming under him in the following cases, viz., where the tenant's term has expired or been duly determined by notice to quit.

The procedure under this Order is not applicable unless the plaintiff can specially endorse his writ under O. III., rule 6, which can be done only in the simplest cases, viz.,

* The procedure under this section is now virtually replaced by that under the R. S. C., Order XIV.

either in an action between the actual parties to the lease — *i.e.*, in an action by the lessor against the lessee, or in cases where there is a *tenancy by estoppel*, *e.g.*, by payment of rent, which prevents the tenant disputing his landlord's title. It does not apply where there has been a devolution of title from the original parties to the tenancy. Therefore the assignee of the reversion cannot sign judgment summarily under O. XIV. against the tenant or his assignees (see *Casey v. Hellyer* (1886), 17 Q.B.D. 97).

Under this procedure the landlord can claim mesne profits, as well as recovery of the land, and a writ specially endorsed with a claim for mesne profits is not vitiated by a claim for double value set up in the affidavit filed by the plaintiff in support of his application for summary judgment (see *Southport Tramways Company v. Gandy* (1897), 2 Q.B. 66).

Summary procedure when available.—It will be noted that the summary method is only available where the tenant *holds over after his term has expired, or has been determined by notice to quit*; but it may be resorted to by a mortgagee against the mortgagor who has attorned tenant to him under a provision in the mortgage deed giving the mortgagee the right to enter and determine the tenancy without notice (see *Hall v. Comfort* (1887), 18 Q.B.D. 11).

Where the landlord is entitled to re-enter or

resume possession by reason of a *forfeiture* or *surrender* he must proceed by an ordinary action of ejectment, which is often a lengthy and expensive process. The main features of this procedure are explained in the following section.

(c) *The Ordinary Action of Ejectment.*

The ordinary action of ejectment must be brought in all cases where the special procedure before mentioned is not available. It must be brought by the person entitled to the legal estate in the land, and therefore the legal reversioner is in general the proper person to sue in ejectment. A person having only an equitable title must bring the legal reversioner before the Court. But by virtue of the Judicature Act, 1873, s. 25, sub-s. (5), a mortgagor who has granted a lease, though he had no legal estate out of which to grant it, can, so long as the mortgagee has not given notice that he intends to take possession or enter into receipt of the rents and profits, sue in ejectment against his tenant.

No demand of possession is, generally speaking, required before commencing proceedings, except in case of a tenancy at will, when such demand must be made before the tenancy can be legally determined (see *ante*, pp. 299, 300). See, too, as to giving notice under s. 14 of the Conveyancing Act, 1881, *ante*, p. 500.

The party to be sued.—The person in possession of the land is the proper party to be sued in this action; and if he is a sub-tenant he must forthwith give his immediate landlord, or his bailiff or receiver, notice of the writ, under penalty of forfeiting the value of three years' improved rack rent of the premises to the person of whom he holds, to be recovered by ordinary action (see Common Law Procedure Act, 1852, s. 202). But the plaintiff may, if he likes, make the tenant a co-defendant with the sub-tenant.

A tenant is deemed to be in possession if his servant is occupying the premises.

Where the premises are vacant the writ should be directed to the person who would have been tenant in possession if he had not abandoned it; or if he be dead to his legal representatives, and failing them to any person who may have taken possession as an executor *de son tort*. A person may be constructively in possession where he has goods, etc., on the premises, though he is not actually there himself. Where the premises are actually vacant, and the tenant cannot be otherwise served with the writ, it may be posted up on the door or some other conspicuous part of the premises (R.S.C., O. IX., r. 9), otherwise the writ must be served personally in the ordinary way.

If a servant of the tenant be named as defendant in the writ and served with a copy

he should not appear, but should leave it to his employer to defend the action ; and if such servant allows judgment to go by default no costs will be recoverable against him (see Woodfall, L. and T., 16th ed., 849).

Any person in possession and not named as a defendant in the writ may, by leave of the Court, appear and defend the proceedings, on making an affidavit that he is in possession by himself or his tenant (*ib.*, p. 850).

Mesne profits may be recovered in the ordinary action of ejectment, provided the plaintiff endorse his writ with a claim for them.

Defences open to tenant.—The defendant in an ordinary action of ejectment has a number of defences which he may set up. They may be summarised as follows ; the effect of them having been already considered in dealing with the modes of determining the tenancy (*ante*, Chap. X.).

Thus, he may plead that his tenancy has not expired or been duly determined ; or that the forfeiture has been waived ; or that he has paid his rent, etc., etc.

But the tenant cannot dispute his landlord's title except by showing that the reversion has passed from him to someone else ; and where the assignee of the reversion is suing, the validity of the assignment may be disputed.

Judgment in ejectment, how enforced.—Judgment in ejectment may be enforced by a writ

of possession, which may include a direction to levy the costs, or the latter may be separately levied at the election of the plaintiff (R.S.C., O. XLVII., r. 3).

Execution on the judgment, whether for possession, mesne profits, or costs, may issue immediately on the judgment being entered, and must, as between the original parties to the judgment, issue within six years therefrom (see R.S.C., O. XLII., rr. 17-22).

(d) Recovery of Premises by County Court Process.

Proceedings to recover possession of the demised premises may now be brought in the County Court, where neither the annual value nor the rent per annum exceeds £50.

There are, in fact, three kinds of ejectment in the County Court—(1) Where there is half a year's rent in arrear and no sufficient distress and the lease contains a proviso for re-entry on non-payment of rent ; (2) where the term has expired or been determined by notice to quit ; (3) in cases where proceedings under (1) and (2) are not applicable.

(1) In this case the procedure in the County Court, which is under s. 139 of the County Courts Act, 1888, is similar to that under the Common Law Procedure Act, 1852, s. 139 of the Act of 1888 being to much the same effect as s. 210 of the former Act.

It provides for the recovery by the landlord of the premises where neither the annual value nor the rent exceeds £50, and there is half a year's rent in arrear, and the landlord has a right of re-entry without any formal demand. The landlord may enter a plaint and take out a summons in the County Court of the district where the premises are situate, and unless five clear days before the return day the tenant pays into Court all arrears of rent and costs, the action will proceed to a hearing, and on proof of the landlord's title, and the value and rent of the premises, and that half a year's rent was in arrear before the plaint was entered, and no sufficient distress was then to be found to satisfy such arrear—*i.e.*, not sufficient to satisfy the half-year's rent if more than that is due—and that the rent is still in arrear, the County Court Judge may order possession to be given up by the tenant within four weeks, unless all rent and costs be meantime paid, and such order may be enforced by a warrant of possession.

In estimating the rent or annual value of the premises under the section, no notice need be taken of any fine or premium; whereas, in the case of proceedings under section 138, to be presently noted, the fact of a fine or premium having been paid for the lease ousts the jurisdiction of the County Court, except where the annual rent and value do not exceed £20.

(2) In this case the procedure in the County

Court—which is under s. 138 of the County Courts Act, 1888—is only applicable to the special case of a tenant *holding over* after his term has *expired*, or has been duly *determined by notice to quit*.

Here, again, the jurisdiction of the County Court is limited to cases where neither the annual value nor the rent exceeds £50, and with this additional condition that *no fine or premium has been paid* for the lease. Subject to this, where the term has expired, or has been duly determined by notice to quit, and the tenant or some person holding or claiming by, through or under him, neglects or refuses to give up possession accordingly, the landlord may enter a plaint in the County Court of the district where the premises are, and take out a summons against the tenant. If the tenant does not at the day named in the summons show good cause to the contrary, then, on proof that he still neglects or refuses to give up possession, and of the yearly value and rent, and of the holding and expiration, or other determination of the tenancy, with the time and manner thereof, and the title of the plaintiff, the County Court judge may order possession to be given up by the tenant either forthwith or on or before such day as the judge shall think fit to name, and if such order be not obeyed, it may be enforced by a warrant of possession.

In his plaint against the tenant the landlord may add a claim for rent or mesne profits or both down to the day appointed for the hearing, or to any preceding day named in the plaint, such claim not to exceed £50.

This procedure is analogous to that in the High Court, under O. XIV. (see *ante*, p. 525). But this difference may be noted, that it is not necessary to prove that the plaintiff was the original lessor, so long as it appears that he was the immediate reversioner when the term expired or determined; but if he became landlord since the tenancy was created his title must be strictly proved.

Procedure under this section when available.—The procedure under this section is only available in the simplest cases—that is where there is no dispute as to title—otherwise the County Court has no jurisdiction to entertain the action, unless both parties consent in writing (County Courts Act, 1888, s. 64).

Effect of order of County Court judge.—An order of a County Court judge under this section has not the effect of a judgment in an action of ejectment in the High Court, and will not entitle the landlord to sue the tenant afterwards in an action of trespass for mesne profits.

It does not work an estoppel. It is not conclusive against a sub-tenant, where the landlord has proceeded against the tenant alone; and the sub-tenant may, notwithstanding the order,

afterwards bring trespass against the superior landlord if he had in fact no right to possession.

Appeal under ss. 138, 139.—In case of proceedings under either of these sections an appeal from the order of a County Court judge on any point, of law or equity, or upon the admission or rejection of any evidence, may be brought as a matter of right where the yearly value or rent of the premises exceeds £20 ; otherwise, only by leave of the County Court judge (see s. 120 of the County Courts Act, 1888).

Notice by sub-tenant to immediate landlord of summons for recovery of possession.—We have already seen that under s. 202 of the Common Law Procedure Act, 1852, a sub-tenant is required to give notice forthwith to his immediate landlord of any writ in ejectment which has been delivered or has come to his knowledge (see *ante*, p. 528). A similar provision is contained in s. 140 of the County Courts Act, 1888, which requires a sub-tenant to give notice at once to his immediate landlord of any summons for recovery of possession which has been served upon him or has come to his knowledge on pain of forfeiting three years' rack rent of the premises.*

* It is doubtful whether s. 140 applies to the case of the ordinary action of ejectment.

Protection of landlord in case of irregularity in proceeding to obtain possession.—Section 145 of the County Courts Act, 1888, contains a provision protecting the landlord in case of any irregularity or informality by him or his agent, or any person acting on his behalf, in the mode of proceeding to obtain possession under the authority of the Act; but leaves the person aggrieved at liberty to bring an action for any special damage sustained by such irregularity or informality.

(3) *Ordinary Action of Ejectment in the County Court.*

The ordinary action of ejectment by a landlord against his tenant can only be brought in the County Court, where the special procedure under ss. 138, 139 is not applicable. Where such procedure is applicable it must be followed (see County Court Rules, 1889, Order V., r. 3).

The jurisdiction of the County Court in ordinary actions of ejectment is also limited to cases where neither the annual value nor the rent of the premises exceeds £50—whether any fine was payable for the lease or not (see s. 59 of the County Courts Act, 1888).

The right of appeal given by s. 120 of the Act is applicable to these actions, but it is not clear whether the right to appeal *as of right* is limited to cases where the rent or annual value exceeds £20 (see *Earl Shrewsbury v. Garfield*,

60 L.J., Q.B. 765 ; Annual County Courts Practice (1900), p. 440, note (c).

For the practice, see the Annual County Courts Practice (1900).

(e) *Proceedings before Justices for the Recovery of Small Tenements.*

In the case of small tenements a summary mode of recovering possession is available in the following cases:—

(1) Where the tenancy is *at will*, or

(2) Where the term does not exceed seven years *and* either (i.) no rent is payable, or (ii.) the rent does not exceed £20 per annum ; *and* no fine is payable.

In either of these cases, when the tenancy has expired, or been duly determined by notice to quit, and the tenant wrongfully holds over, there is a summary remedy for recovering possession by means of an application to the justices of the peace in petty sessions, or to a stipendiary magistrate. When the landlord has proved his claim to the satisfaction of the justices or magistrate a warrant is issued to the constables of the district where the premises are situated, and they are empowered thereunder to take possession by force, if necessary, and deliver the same to the landlord (see 1 and 2 Vict., c. 74, s. 11).

Again, the churchwardens and overseers of the poor of any parish have a similar remedy

for recovering possession of parish property which is wrongfully held over by persons in occupation thereof (see the Poor Relief Act, 1819, ss. 24, 25).

Parish schoolmasters who wrongfully continue in possession of the school premises after removal from office, may be ejected by a similar process (23 and 24 Vict., c. 136, s. 13).

Again, with regard to *cottage allotments* when the cottagers are *four weeks* in arrear with their rent, they may be served by the churchwardens or overseers of the parish with a notice to quit, and are bound to give up possession within a week after notice, failing which they may be ejected under a warrant of possession issued by the justices (see Allotments Act, 1832, ss. 5, 6 ; see also the power to recover allotment gardens under the Inclosure Act, 1845, and the Allotments Acts, 1873-1887).

Recovery of deserted premises.—In the case of deserted premises, where a tenant at a rack rent has vacated them, and half a year's rent is in arrear, and there is not sufficient distress to be found thereon to satisfy such arrears, the justices at the request of the landlord, may by a summary process put the landlord in possession (see 11 Geo. II., c. 19, s. 16, as amended by 57 Geo. III., c. 52 ; and as to the metropolis, 3 and 4 Vict., c. 84, s. 13 ; and as to the City of London, 11 and 12 Vict., c. 43, s. 34).

CHAPTER XIII.

RIGHTS AND LIABILITIES OF THE PARTIES ON THE TERMINATION OF THE TENANCY.

On the termination of the tenancy there are certain rights and liabilities of the parties to be considered which give rise to many very important questions. They relate chiefly to the following matters :—(1) The position of the tenant who holds over after his term has expired. (2) The right of the tenant to emblements. (3) Rights of landlord and tenant with regard to fixtures. (4) The right of an agricultural tenant to compensation for improvements carried out by him on his holding.

(1) *The Position of a Tenant who Holds Over after his Tenancy has Expired.*

We have already considered under what circumstances a tenant who with his landlord's consent "holds over" after his tenancy has expired may become a yearly tenant (see *ante*, pp. 291-3).

If, however, no such consent be given, the tenant who holds over may not only be ejected, but incurs the following statutory liabilities as well.

By 4 Geo. II., c. 28, s. 1, if he wilfully holds over *after a written demand of possession by*

the landlord, he is liable to pay at the rate of *double the yearly value* of the lands so held so long as he remains in possession.

Again, by 11 Geo. II., c. 19, s. 18, if a tenant *has given proper notice to quit*, and, notwithstanding, continues in possession beyond the time specified in the notice, he is henceforth, so long as he remains in possession, to pay the landlord *double the rent* he would otherwise have paid. But the landlord would, by accepting rent on the old terms, waive his rights under these Acts.

Difference between 4 Geo. II., c. 28, s. 1, and 11 Geo. II. c. 19, s. 18.—There are some important differences to be noted between these statutes. The former only applies to a tenancy of at least a term of years; the notice must have been given by the landlord, and in *writing*; the holding over must be *wilful*. If, for instance, it was under a mistaken notion that some other person was entitled to the reversion, the landlord could not enforce this penalty; the penalty is double *value*, which may be more or less than the rent; and such double value can only be sued for in an action by the landlord.

The latter Act applies to *any kind of tenancy* where a notice to quit is necessary to determine it; the notice must have been given by the tenant, and need not have been in writing; the holding over need not be wilful; the penalty is double

rent; and it may be either sued or distrained for.

(2) *The Tenant's Right to "Emblements."*

This only occurs in case of tenancies of an uncertain duration, where the tenant might unexpectedly lose the fruits of his industry. The emblements would be the right in respect of the crops raised by the tenant's own industry and manurance, and such as ordinarily repay the labour by which they are produced within the year in which the labour is bestowed.

Meaning of "emblements."—"Emblements" include not only crops, but roots or other annual profit, but not young fruit trees, or young oak trees, etc., as they yield no present annual profit. The rule has been thus expressed. If the lessee of a tenant for life sows the land, and dies before harvest, his executor shall have the emblements or profits of the crop. This right is now to be read in connection with the provisions of 14 and 15 Vict., c. 25, s. 1, which provides that the tenant of a life tenant, or a person holding an uncertain interest, shall, instead of claims to emblements, continue to hold until the expiration of the then current year of the tenancy, that the succeeding landlord shall be entitled to recover a fair proportion of the rent for the period, and that as between him and the preceding landlord all the terms, etc., of the lease are to apply, and that no notice to quit shall be necessary to determine

such holding or occupation. This enactment does not entitle a tenant who has no claim to emblements to hold until the expiration of the current year of the tenancy (see *Stradbroke v. Malcby*, 2 Ir. Rep. N.S. 406).

No claim to emblements arises where the tenancy is determined by the act or default of the tenant himself, *e.g.*, by forfeiture.

(3) *Rights of Landlord and Tenant with regard to Fixtures.*

Definition of fixtures—Whatever is affixed to the soil is in law a fixture, and at common law no fixture could be removed without the consent of the landlord. Various exceptions were afterwards engrafted on this rule, as will be shown by-and-by.

Mode and degree of annexation to soil.—A fixture may be such, by being either actually or constructively annexed to the soil. Actual annexation again may be direct or indirect—*direct*, as where a chattel is let into the land, the soil being displaced for that purpose; *indirect*, as where a chattel is affixed to something previously attached to the soil.

Displacement of the soil must not be merely the result of a prepared foundation, or of the article sinking into the ground by its own weight. Take, for instance, the case of weighing machines, simply placed in bricked holes in the ground, but not fixed by screws or other-

wise. These are not so annexed as to make them fixtures (*ex parte Astbury*, L.R. 4 Ch. 630).

Annexation does not wholly depend on the possibility or difficulty of disconnecting the article from the ground or building, but does so where the article is so attached or welded that it cannot be removed without destruction or disintegration, as in the case of wall-paper or the bricks of a house (see *D'Eyncourt v. Gregory*, L.R. 3 Ex. 382; *Norton v. Dashwood*, 1896, 2 Ch. 497).

A building of brick or stone cannot under any circumstances be considered other than a fixture, though conceivably resolvable into the component materials, which might be re-erected in a similar form.

Object of annexation.—Besides the *mode* and *degree* of annexation, the *object* with which a chattel is set up may show whether it is a fixture or not. For instance, if it is erected for a permanent object, though easily disconnected, *e.g.*, a window or door, it is a fixture. By permanent object must be understood that the article is annexed to the land or building for the purpose of improving that land or building, and not merely for the temporary enjoyment of the article itself.

In some cases the annexation is obviously temporary, as a carpet, mirror, picture, or clock nailed, screwed, or otherwise fastened to

the floor or wall. But a mirror, or picture, or tapestry, if fixed in a panel so as to form an integral part of the wall surface, will be considered as constituting part of the wall itself (*D'Eyncourt v. Gregory*; *Norton v. Dashwood, sup.*). If the purpose of the annexation is not obvious, it must be ascertained whether it was temporary or permanent, the rule being thus expressed: "If the article is annexed to the land or building with a view to its better enjoyment during the interest of the person annexing it, though such interest be only that of a tenant, it becomes a fixture. If it is annexed with the intention of its remaining affixed during the continuance of that interest, though such interest be temporary only, the purpose of the annexation cannot be considered temporary only."

Constructive annexation.—Constructive annexation of chattels occurs where articles are so placed on or in connection with land or buildings as to be part and parcel of it, *e.g.*, doors, bolts, windows, shutters, locks, keys, etc., parts of fixed machinery necessary to its efficient working, though not actually attached, and duplicate parts of fixed machinery.

Vases and statues, again, where part of the architectural design of a house or its accessories, though not affixed but resting and kept in place merely by their own weight, are

constructive fixtures (see Wright's Law of Fixtures,* 2nd ed., pp. 5-12.).

Removable fixtures.—Having ascertained what is a fixture, we have next to consider whether it is removable or not. There are four classes of removable, or, as they are sometimes called, tenant's fixtures:—(1) Trade fixtures; (2) fixtures put up for trade and other purposes combined; (3) agricultural fixtures; (4) fixtures erected for ornament or convenience.

All fixtures included in these classes must be removed before the end of the tenancy, otherwise they become the property of the landlord (see further as to this *post*, p. 551).

(1) *Trade Fixtures.*

The most important class of removable fixtures comprises those put up for purposes of trade generally, whether the trade be in any way connected with the land or not, but subject to any stipulations in the lease controlling the tenant's rights in this respect.

A tenant is not, however, entitled to remove any kind of fixture merely because it is put up for purpose of trade. Thus, a substantial erection, such as a building, could not be removed. There is a difference, in fact, between *trade fixtures* and *buildings used in trade* (see *Whitehead v. Bennett*, 27 L.J. Ch. 474), where V. C. Kindersley explains the

* Published at the Office of the "Estates Gazette."

difference in this respect between a building and a large steam engine, which, though, impossible to remove in its integral condition, may yet be taken to pieces and put together in the same form elsewhere.

What buildings removable.—But buildings of the following kind have been held to be removable, *e.g.*, a varnish house, built on plates laid in brickwork, let into the ground with a brick chimney; a Dutch barn, set up for trading purposes with a foundation of brickwork, and uprights fixed on and arising from the brickwork, and supporting a roof composed of tiles with the sides open. And buildings, such as an engine house, which are merely accessory to a removable thing, may be removed, unless the house be really of a permanent kind, and available for other purposes after removal of its principal, or unless removal is impossible without great injury to the freehold; and so greenhouses and hothouses, erected by a market gardener or nurseryman for the purposes of his trade, are removable.

Enumeration of removable trade fixtures.—Among pure chattel fixtures put up by a tenant for trade purposes and removable by him may be enumerated the following:—

Vessels and utensils of trade, *e.g.*, furnaces, coppers, brewing vessels, fixed vats, salt-pans fixed with mortar to a brick floor, baker's ovens, pipes, tables, etc., plant of a brewer or distiller,

etc. ; pumps, engines, cisterns, cranes, presses, etc. ; shop fittings, iron safes, repositories and other similar things usually erected in shops or warehouses ; machinery, steam engines in factories, etc., etc.

In some cases trade fixtures may be removable by local custom or usage (see further hereon, Wright's Law of Fixtures, 2nd ed., pp. 16-21).

(2) *Agricultural Fixtures.*

Agricultural fixtures were not by the common law removable (see *Elwes v. Maw*, 3 East 38), and their removability being purely the creation of statutes passed at various times, it is necessary to bear in mind that, unless the conditions of their removal laid down by these statutes be strictly observed, they still remain subject to the common law rule.

Fixtures put up with consent of landlord.—First, by the Landlord and Tenant Act, 1851, where a tenant had voluntarily at his own expense, and *with the written consent of his landlord*, put up farm buildings, detached or otherwise, or any other building, engine or machinery, *either for purposes of agriculture, or trade and agriculture*, he might remove them if he did not injure the land or buildings, and left the premises in as good a state as before any buildings had been erected. But he had to give the landlord a *month's previous notice in*

writing of his intention to remove these fixtures, and the landlord had the option of purchasing all or any of them at a valuation.

Fixtures removable under the Agricultural Holdings Act.—The limited right of removal thus given to the tenant was extended by the Agricultural Holdings Acts, 1875, 1883, of which the Act of 1883 is the only one we need now consider. This Act only applies to holdings, either wholly agricultural or wholly pastoral, or partly agricultural and partly pastoral, or wholly or partly cultivated as a market garden, held under a landlord for a term of years, or for lives, or for lives and years, or from year to year by a tenant holding no employment under such landlord (ss. 54, 61); but by the Market Gardeners' Compensation Act, 1895, it also applies to cases where after the passing of that Act the parties to a tenancy agree in writing that the holding is to be treated as a market garden (s. 3), or where the holding is in effect treated as a market garden and the tenant has made improvements of a kind which would entitle him to compensation or removal, and the landlord has not by notice in writing dissented from the same (s. 4).

It will be seen from this that in the case of holdings where the tenancy depends on the tenant continuing in the landlord's employment, and in the case of a tenancy at will, and of a tenancy for a year or less, the tenant's

right (apart from contract) to remove agricultural fixtures is still governed by the Landlord and Tenant Act, 1851.

Section 34 of the Agricultural Holdings Act, 1833, contains the following provisions as to the tenant's right to remove agricultural fixtures.

Where, after the commencement of the Act, a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under the Act or otherwise entitled to compensation (see as to this *post*, p. 561), and which is voluntarily erected by the tenant and not in substitution for some fixture or building belonging to the landlord, then such fixture or building shall be the property of, and removable by, the tenant before or within a reasonable time after the determination of the tenancy.

Conditions of removability.—This right of removal is subject to the following conditions being observed :—

1. Before removing any fixture or building the tenant must pay all rent owing and perform all his other obligations to the landlord in respect of the holding.

2. In removing any fixture no avoidable damage must be done to the holding.

3. Immediately after the removal all damage caused must be made good by the tenant.

4. The tenant must not remove any fixture without giving the landlord one month's pre-

vious notice in writing of his intention to remove it.

5. The landlord shall have the right at any time before the expiration of the notice of removal, by written notice to the tenant, to purchase any of the fixtures comprised in the tenant's notice of removal, and any fixture he then elects to buy shall be left by the tenant and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant, and any difference as to value shall be settled by reference under the Act as in case of compensation, but without appeal (*ib.*).

The term "other fixture" in this section apparently means other fixture of the kind previously enumerated—*i.e.*, engine, machinery, fencing—though it would probably include all such as are most commonly used in connection with agriculture. In case of a nurseryman, the term "engine" might possibly include devices or contrivances not of a strictly mechanical nature (see Amos and Ferard on Fixtures, p. 91, note (g), and the cases there collected). Probably also, fixtures or buildings put up for other than agricultural purposes—*e.g.*, for domestic convenience—might be removed.

Right to remove may be excluded by agreement.
—It seems that the right of removal of fixtures given to a tenant by s. 34 is one which may be negatived by agreement between the parties;

though the right to compensation for improvements given by the Act cannot be so negatived (see s. 55).

Right to remove when land in mortgage.—In the case of land in mortgage, where the tenancy would not, apart from the Conveyancing Act, 1881, or special agreement, be binding on the mortgagee (see as to this *ante*, pp. 29-33), the occupier has now by virtue of the Tenants' Compensation Act, 1890, a right as against the mortgagee to compensation for such erections and improvements as would come within the definition of fixtures, though not a right to remove the same (see this Act, *post*, Appendix).

Right to remove market garden fixtures, etc.—The right to remove fixtures conferred on tenants by s. 34 of the Agricultural Holdings Act, 1883, now extends to fixtures and buildings affixed or erected by a market gardener for the purposes of his trade as such (Market Gardeners' Compensation Act, 1895, s. 3).

By sub-s. (5) of the same section the tenant of a market garden holding may remove all fruit trees and fruit bushes planted by him, and not permanently set out, but if he does not remove them before the termination of his tenancy they remain the property of the landlord, and the tenant will not be entitled to any compensation in respect thereof.

As to the tenant's right of removal in case of

tenancies current at the commencement of the Act, see s. 4 of the Act, *post*, Appendix.

A "market garden" means a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of a market gardener (s. 6).

As to the improvements for which market gardeners can claim compensation, see section 3, sub-s. (3), *post*, p. 577. The tenant is only entitled to remove those improvements for which he is not entitled to compensation.

Fixtures on allotments and small holdings.—By the Allotments Act, 1887, a right to remove fixtures on allotments let by parish and district councils is given to the tenant of such allotments; and a similar right is contained in the Small Holdings Act, 1892, s. 4, (2), as regards "small holdings" let by a County Council.

(3) *Fixtures put up for Trade and other Purposes combined.*

We have already seen that a right to remove fixtures put up by tenants for the purposes of trade and agriculture is conferred by the Landlord and Tenant Act, 1851 (see *ante*, p. 546).

Apart from this Act, fixtures put up for trade and other purposes will be removable where the primary or predominant object for which the erections were made was their use in trade (see Wright's Law of Fixtures, 2nd ed., Chap. IV.).

(4) *Fixtures erected for Ornament or Convenience.*

What included in this class.—This class of removable fixtures will include such things as hangings, tapestry, pier and looking glasses, cornices, window blinds, marble slabs, cupboards, stoves and grates, even if fixed into the chimney-pieces with brickwork, cupboards supported by hold-fasts, and standing on the ground, cooling coppers, mash-tubs, watertubs, pumps, iron backs to chimneys, furnaces, coppers, ovens and ranges, rails, fences, hurdles, fixed tables and book-cases, clock-cases, and bells. It is doubtful whether wainscots and chimney-pieces are removable.

Conservatories and pineries are not removable fixtures of this class, though possibly removable on agricultural holdings under s. 34 of the Agricultural Holdings Act, 1883, even though only put up for ornament or domestic convenience.

But the heating pipes in a greenhouse, if connected merely by screws, are removable.

Gas-fittings are strictly fixtures, but the tenant's right to remove them is in practice never questioned.

Conditions of removability.—Fixtures of this class, if so attached as not to be easily removable, or if they constitute a permanent improvement, must not be removed; and further, no injury beyond what is unavoidable and capable

of remedy must be caused, and if they cannot be removed without serious injury they are irremovable.

The right of removing fixtures of this class is less extensive than in case of trade fixtures.

The Time for Removing Fixtures.

All removable fixtures must be removed before the expiration of the term, whether by effluxion of time, surrender, forfeiture or otherwise. During the term it seems that the general property in the fixtures is in the landlord as part of the freehold, but subject to the special right of removal which the tenant has before the termination of the tenancy.

Removal after end of tenancy, when allowable.—Where the tenant remains in possession after the end of the term under a right still to consider himself as tenant, which further period of time has been called an “excrescence” or “enlargement” of the term, his right to remove fixtures continues during such further term.

But mere continuance in possession without some right to do so will not prolong the right of removal. The tenant must be not only *de facto*, but also *de jure*, in possession (see *Barff v. Probyn*, 73 L.T. Rep. 118).

Reasonable time for removing agricultural fixtures.—Where the tenant has by agreement, or under the Agricultural Holdings Act, 1883, the right to remove fixtures at the end of

his tenancy, he will have a reasonable time after its termination, whether by forfeiture or otherwise, for removing them. And so, where the duration of the tenancy is uncertain, as in a case of a tenancy at will.

Where a lease is forfeited, involving the destruction of a sub-lease, it is uncertain whether the sub-lessee has not the same right of removal as a tenant whose interest is of uncertain duration.

Right of trustee in bankruptcy after disclaimer.—On the bankruptcy of a tenant the trustee who disclaims the lease (see *ante*, p. 458) has a reasonable time after such disclaimer—if the landlord declines to take them over at a valuation—for removing any fixtures which the tenant himself would have been entitled to remove. Further, by the Bankruptcy Act, 1883, s. 55, sub-s. 3, where the trustee wishes to disclaim, the Court may make such order with regard to fixtures as may be just.

Rights of third parties.—Again, a tenant cannot by surrendering his lease prejudice the rights of third parties who have acquired an interest in the fixtures.

Therefore a purchaser or mortgagee of fixtures would in such a case have a reasonable time after the termination of the lease in which to remove them, and could bring an action against an incoming tenant for preventing him from exercising his rights.

It is doubtful whether the tenant can preserve his right of removal merely by giving up possession of the demised premises "without prejudice to his right to remove the fixtures," and it has been held that a letter from the landlord stating that he did not object to the tenant leaving fixtures on the premises, and making the best terms he could with the incoming tenant, did not amount to a license to the tenant to enter at any time and resume them. The safer course is to provide expressly in the lease for the tenant having a certain time for removing his fixtures. A clause framed on the lines of s. 34 of the Agricultural Holdings Act, 1883, would be useful (see Wright's Law of Fixtures 2nd ed., p. 50).

In the recent case of *Thomas v. Jennings* (66 L.J. Q.B. 5), it was held that, as between landlord and tenant, an agreement made during the tenancy that the tenant should be at liberty to leave tenant's fixtures on the premises after the expiration of the tenancy, and to sever and remove them after they have become part of the freehold, might in the event of the landlord afterwards refusing to allow severance and removal entitle the tenant to sue him for the value of the fixtures; but that where the landlord had prior to such agreement mortgaged the property, the tenant could not exercise the right of severance and removal as against the mortgagee who had gone into

possession before the tenant claimed to exercise his agreed right of removal.

Contracts Relating to Fixtures.

Although a tenant has a general right to remove certain kinds of fixtures, his right may be controlled by the terms of the lease. Thus, he may covenant to give up all fixtures, both those already erected and those which may be put up during the tenancy. This would preclude him from removing tenant's fixtures. But a covenant to give up specified fixtures, all being what are known as *landlord's fixtures*, and also all other fixtures, will be read as restraining the tenant only from removing landlord's fixtures, leaving him at liberty to take away *tenant's fixtures*. New fixtures which have been substituted for old ones must be given up under a covenant to yield up all fixtures, even though the old ones be restored.

A covenant to yield up fixtures is binding on a sub-tenant, though the latter may have, as between himself and his immediate landlord (the lessee), reserved his right to remove—*e.g.*, trade fixtures.

An agreement reserving to the tenant the right to remove tenant's fixtures after the expiration of the term, is neither a contract for the *sale of goods* (see Sale of Goods Act, 1893, s. 4), nor one relating to an *interest in land*

(see Statute of Frauds, s. 4), and therefore need not be in writing.

Right to Fixtures in Case of Mortgage of Lease.

Where a lease is mortgaged by assignment, the mortgagee, in the absence of agreement to the contrary, gets the whole interest of the mortgagor, including the right to sever tenant's fixtures; but where the mortgage is by underlease, the mortgagee only gets a derivative term, and with it the right only to use the fixtures during such term, the mortgagor retaining the right to sever for the residue of the term. An equitable mortgagee has the right to fixtures equally with a legal mortgagee.

Where a tenant who has mortgaged his premises afterwards puts up trade fixtures belonging to a third party, and the mortgagee allows the tenant to remain in possession, he cannot prevent the owners of the fixtures from removing them pursuant to an agreement for that purpose made before the mortgage, and of which he was unaware.

In such a case it will be presumed that the mortgagee acquiesced in the tenant making arrangements for fixing and removing fixtures for the purposes of his trade (*Gough v. Wood* (1894), 1 Q.B. 713; cf. this case with *Hobson v. Gorringe* (1897), 1 Ch. 182).

Fixtures taken with lease—right to remove.—Where a tenant purchases fixtures from his

landlord at the beginning of the tenancy it is uncertain whether he can by severing them during the term convert them into mere chattels in the same way as he could fixtures put up by himself. In the former case his right to remove is really created by the contract of purchase, and not by the general law as to fixtures, and whether he would lose the right by not removing them during the term is a point which apparently has still to be decided.

Right to fixtures on bankruptcy of tenant.—On bankruptcy of a tenant, fixtures not then severed will [not] pass to the trustee under the “order and disposition” clause of the Bankruptcy Act, 1883, even though mortgaged separately from the premises to which they remain affixed.

As, however, the trustee is the assignee in law of the tenant's interest in the lease, he may claim the right to sever and remove the fixtures. And he may do this and afterwards disclaim the lease, but he cannot remove them after he has disclaimed. Even though the lease reserve to the tenant the right to remove fixtures after the expiration of the term, the trustee may not remove them after disclaimer (see B.A., 1883, s. 55, par. 2, and see *ex parte Glegg*, 19 Ch.D. 7).

Remedies for Wrongful Removal of Fixtures.

If a tenant for years wrongfully removes fixtures he may be answerable to his landlord as

for "waste" (as to this see *ante*, p. 179). If the reversioner is dead, and the injury was done within six calendar months before his death, his personal representatives may sue, provided they do so within a year after his decease (3 and 4 Will. IV., c. 42, s. 2). So, if a tenant for years dies having committed waste or destruction of fixtures, his personal representatives can be made answerable if the injury was done within six calendar months before his death, and action is brought within six calendar months after the administration has commenced. The executors and administrators of a tenant for years are punishable for waste committed by them while in possession of the property demised; and if a testator's personal estate has been benefited by any waste or injury to fixtures done by him, his executors can be made chargeable for it. An injunction may also be had to prevent waste or injury to fixtures, or breach of a covenant to repair and deliver up fixtures. The tenant can sue for wrongful removal of fixtures; and the landlord can sue a purchaser or mortgagee of fixtures not properly removable in an action of trover even during the term.

Measure of damages.—The damages recoverable in an action for wrongful removal of fixtures, whether by landlord or tenant, and whether during or after the end of the tenancy, are the value of the fixtures as chattels merely, and not

what would be their value in an unsevered state, as between outgoing and incoming tenants (see *Barff v. Probyn*, 73 L.T. Rep. 118). The rule for ascertaining the value of fixtures wrongfully removed by the tenant or his mortgagee was thus expressed in *Thomas v. Jennings* (66 L.J. Q.B. 5, per Hawkins, J.): "The amount of damages should be arrived at by ascertaining first of all what would be the value of the materials of the fixtures on the premises, when and as severed from the freehold for the purpose of re-erecting them elsewhere, having regard to their age and condition, minus the cost of severing them (if severed by the mortgagee), and minus also the amount of the reasonable cost of making good, as far as possible, the damage and costs occasioned to the premises in severing the fixtures, storing the materials, carrying them away, and any permanent damage occasioned to the premises which cannot be made good." But an action for trespass to goods may also be brought in respect of fixtures severed, in which it seems the full value of the fixtures may be recovered.

If a tenant fails to deliver up fixtures pursuant to a covenant in that behalf, the damages recoverable by the landlord are not necessarily their full value, but the actual benefit which would have accrued to the landlord if the covenant had been carried out (see *Watson v. Lane*, 11 Exch. 769).

Seizure of Fixtures under Execution.

Fixtures which a tenant may remove are liable to be taken by the sheriff under an execution against the tenant, but only to the extent to which the tenant himself could have removed them.

Criminal Offences as to Fixtures.

Theft and malicious injury to fixtures are punishable under the Larceny Act, 1861, and the Malicious Injuries to Property Act, 1861.*

(4) *The Tenant's Right to Compensation for Agricultural Improvements.*

An agricultural tenant's claim to compensation at the end of his tenancy for improvements made by him upon his holding during the term of his lease now practically rests upon the Agricultural Holdings Acts, and those subsidiary enactments which have been incorporated therewith. By the common law no such right to compensation existed apart from express contract between the parties to the tenancy or local custom. Now all customary right to compensation is taken away by the Agricultural Holdings Act, 1883, except in cases where the Act does not apply.

Improvements for which compensation may be claimed.—The improvements in respect of which the statutory right of compensation is

* As to the law of fixtures generally, see Wright's Law of Fixtures, 2nd ed., published at the "Estates Gazette" Office.

given may be divided into three classes. First, those for which the landlord's consent is necessary; 2nd, those of which notice of the tenant's intention to execute them must be given to the landlord; 3rd, those in respect of which neither consent nor notice is required.

But with regard to all three classes of improvements the right to compensation only arises on quitting the holding at the determination of a tenancy, and, therefore, it has been held that the trustee in bankruptcy of a tenant in whom a lease has become vested, and who has disclaimed it under the 55th section of the Bankruptcy Act, 1883, has no right to claim on behalf of the creditors compensation for improvements made by the bankrupt tenant (*Schofield v. Hincks*, 60 L.T. Rep. 573).

Basis of compensation.—The tenant will be entitled on quitting to obtain from his landlord as compensation such sum as fairly represents the value of the improvements to an incoming tenant, but in estimating such value no account is to be taken of such part of the improvements as is due to the inherent capabilities of the soil (see s. 1). In construing the meaning of this limitation it is the opinion of a leading authority that "it would probably have the effect of preventing the tenant obtaining more for an improvement than his actual outlay, coupled with remuneration for his skill and for other factors (if any) which make up the value

of the improvement, excluding the qualities of the soil and such advantages as may be due to situation or the like."

Holdings to which the Act applies.—The Agricultural Holdings Act, 1883, applies to any holding, either wholly agricultural or wholly pastoral, or partly agricultural and partly pastoral, or wholly or partly cultivated as a market garden; but not to any holding let to a tenant during his continuance in any office or employment under his landlord (s. 54). It applies also to any letting or agreement for a term of years, or for lives, or from year to year (s. 61).

Mode of estimating compensation.—In estimating the compensation to be paid to a tenant under the Act regard is to be had (a) to any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; (b) in the case of compensation for manure, the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off or removed from the holding within the last two years of the tenancy, or other less time for which the tenancy has endured, except so far as a proper return of manure to the holding has been made in respect of such produce so sold off or removed therefrom; and (c) any sum due to the landlord [in respect of rent, or of waste com-

mitted, or permitted, by the tenant within four years next before the determination of the tenancy, or in respect of any breach within the like period of any agreement relating to a matter of husbandry, or in respect of any breach of covenant or other agreement connected with the contract of tenancy committed by the tenant, also any taxes, rates and tithe rent-charge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord (s. 6).

On the other hand the tenant's compensation may be increased by any sum due to him in respect of any breach by the landlord (*ib.*).

Contracting out of the Act.—A landlord and tenant cannot contract themselves out of the Act so far as the tenant's right to compensation is concerned (s. 55), but in certain cases they may agree as to compensation in lieu of that given by the Act (*ib.*), as will be presently noticed.

Again, the tenant may, it seems, agree not to exercise the right to remove fixtures which is given to him by s. 34 of the Act (see as to this *ante*, pp. 548-9).

Limit to tenant's right to compensation.—It has been stated above that the tenant's right to compensation only arises on quitting his holding, but there is a limit to his right even then. For instance, if he makes an improvement when about to quit.

In such a case it is provided by s. 59 that he shall receive no compensation for any improvement, other than manures, executed by him (if he is a lessee for a term) within a year before the end of his lease, or (if he is a yearly tenant) at any time after final notice to quit has been given or received and acted upon within one year before he leaves his holding, unless he quits at the end of the year pursuant to notice given by the landlord after the improvement has commenced ; and unless the tenant, whether yearly or otherwise, has, before beginning the improvement, served the landlord with notice of his intention to begin it, and the landlord has within a month thereafter either assented, or not objected, to the improvement being made (*ib.*).

List of Improvements for which Compensation may be had.

The following is the list of improvements in respect of which compensation may be claimed by a tenant under the Act.

FIRST SCHEDULE.

Part I.

Improvements to which consent of landlord is required.

- (1.) Erection or enlargement of buildings.
- (2.) Formation of silos.
- (3.) Laying down of permanent pasture.
- (4.) Making and planting of osier beds.

(5.) Making of water meadows, or works of irrigation.

(6.) Making of gardens.

(7.) Making or improving of roads or bridges.

(8.) Making or improving the watercourses, ponds, wells or reservoirs, or of works for the application of water power, or for supply of water for agricultural or domestic purposes.

(9.) Making of fences.

(10.) Planting of hops.

(11.) Planting of orchards or fruit bushes.

(12.) Reclaiming of waste land.

(13.) Warping of land.

(14.) Embankment and sluices against floods.

Part II.

Improvement in respect of which notice to landlord is required.

(15.) Drainage.

Part III.

Improvements to which consent of landlord is not required.

(16.) Boning of land with undissolved bones.

(17.) Chalking of land.

(18.) Clay burning.

(19.) Claying of land.

(20.) Liming of land.

(21.) Marling of land.

(22.) Application to land of purchased artificial or other purchased manure.

(23.) Consumption on the holding by cattle, sheep or pigs, of cake or other feeding stuff not produced on the holding.

Consent of landlord to improvements.—It will be seen that the improvements in Part I. are of a permanent nature, and if executed after January 1, 1884, no compensation can be claimed by the tenant unless the landlord had previously to the execution of the improvement given his written consent. Such consent may be given unconditionally or upon agreed terms as to compensation or otherwise, and any agreed compensation shall be in lieu of that given by the Act (s. 3).

Improvements made before January 1, 1884.—In the event of any improvement of the kind mentioned in Parts I. and II. of the First Schedule, having been executed within ten years before January 1, 1884, and of the landlord having given his written consent within one year thereafter to the making of it, the tenant can on quitting his holding on determination of a tenancy after January 1, 1884, unless already entitled under any contract, or custom, or the repealed Agricultural Holdings Act of 1875, obtain compensation under the Act of 1883 in the same way as if that Act had been in force when the improvement was executed (s. 2, sub-s. 2).

Again, if any improvement in Part III. of the First Schedule was executed within ten years

before January 1, 1884, and the tenant was not entitled to any compensation in respect thereof by any contract, or custom, or the Act of 1875, the tenant will be similarly entitled on quitting his holding at the determination of a tenancy after January 1, 1884, to claim compensation (s. 2, sub-ss. (1) (2)).

Notice to landlord as to improvements in Part II.—As to improvements in Part II. of the First Schedule executed after January 1, 1884, the tenant will not be entitled to the compensation given by the Act unless not more than *three* months and not less than *two* months before beginning to execute the improvement he gives to the landlord written notice of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given the landlord and tenant may agree on the terms as to compensation, or otherwise, on which the improvement is to be executed, and any such agreed compensation shall be in lieu of that given by the Act, or the landlord may, unless the tenant's notice is previously withdrawn, undertake to execute the improvement himself, and may do it in any reasonable and proper manner which he thinks fit and charge the tenant with a sum not exceeding £5 per cent. per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum payable for a period of twenty-five years, as will repay such outlay

in the same period with interest at the rate of 3 per cent. per annum, such annual sum to be recoverable as rent (s. 4).

If no such agreement or undertaking is entered into, or if the landlord fails to carry out any such undertaking within a reasonable time, the tenant may execute the improvement himself, and shall be entitled to compensation for it under the Act (*ib.*). It is competent for the landlord and tenant, if they like, to dispense with any notice under this section and to come to an agreement in a lease, or otherwise, between themselves in the same way and of the same validity as if such notice had been given (*ib.*).

Compensation in lieu of that given by the Act.—In the case of a tenancy current on January 1, 1884, if any specific compensation for any improvement specified in the First Schedule is provided either by writing, custom, or the Agricultural Holdings Act of 1875, then, although such improvement is commenced after that date, the compensation payable in respect thereof shall be the specific compensation in lieu of that provided by the Act of 1883 (s. 5).

Again, if a tenancy commence after January 1, 1884, and there is a particular written agreement securing fair and reasonable compensation to the tenant for any improvement in Part III. of the First Schedule executed after that date, such compensation shall be payable in lieu of that

given by the Act of 1883 (s. 5). The last mentioned provision, relating to a particular agreement, will also apply to the case of a tenancy current on January 1, 1884, in respect of any improvement in Part III. specific compensation for which is not provided by any written agreement, custom, or the Act of 1875 (*ib.*).

Section 57 provides that compensation shall not be claimed by custom, or otherwise, than in manner authorised by the Act in respect of improvements to which a tenant is entitled to compensation under the Act, but where he is not so entitled he may recover compensation under any other Act, or by custom or agreement. This section only applies to a tenant claiming compensation under the Act, and not to a tenant claiming compensation under an agreement outside the Act (see *Newby v. Eckersley* (1899), 1 Q.B. 465; *in re Pearson v. I'Anson* (1899), 2 Q.B. 618).

There is nothing in the Act to prevent landlord and tenant agreeing to a compensation to be settled by arbitration without reference to the Act, and any award under such arbitration may be enforced by the landlord under the Arbitration Act, 1889, s. 12, in the same manner as a judgment (*In re Lloyd and Tooth* (1899), 1 Q.B. 559).*

* In the case of *re Pearson v. I'Anson* (*sup.*), it was held that the manager of an estate has, in the absence of any limitation of his authority, power to bind the landlord by an agreement with the tenant that the latter may be at liberty

Notice to Landlord of Tenant's Intention to Claim Compensation.

A tenant seeking to claim compensation under the Act of 1883, shall, *two* months at least before the determination of his tenancy, give to his landlord written notice of such intention to make the claim, and thereupon the landlord may at any time before the termination of the tenancy, or within fourteen days after, give a counter-notice in writing to the tenant of his intention to make a claim in respect of any waste, or breach of covenant, or agreement. Both notice and counter-notice must give reasonable particulars of the nature and amount of the claim (s. 7).

“Determination of the tenancy” in this section, means determination of the holding in so far as it is an agricultural holding, so that under a tenancy of agricultural land terminating by a custom recognised in the lease on an earlier date than the tenancy of the buildings, the tenancy for the purposes of compensation under the Act is determined at the earlier date (*Morley v. Carter* (1898), 1 Q.B. 8).

The landlord and tenant may agree on the

to change the cultivation of the estate from agricultural land to that of a market garden. Where, by such an agreement made since the passing of the Agricultural Holdings Act, 1883, it is provided that the tenant shall be allowed a market garden valuation upon leaving the estate, the tenant is entitled at the termination of his tenancy to receive from the landlord under the agreement the amount of such valuation.

amount, mode and time of payment, and in case of difference it shall be settled by arbitration (s. 8). Sections 9-28 deal with the mode of reference (see *post*, Appendix, where these sections are set out in full).

Where the sum claimed exceeds £100 an appeal lies to the County Court on the ground that the award is invalid, or that compensation has been improperly awarded, or not awarded (s. 23). The decision of the County Court judge is made final unless on a question of law, when the opinion of the High Court may be taken by stating a special case. It is doubtful whether the general right of appeal from County Court judgments given by the 120th section of the County Courts Act, 1888, would override this express enactment of the Agricultural Holdings Act.

Payment of Compensation by Incoming Tenant.

Section 56 gives to an incoming tenant, by whom compensation is paid to an outgoing tenant with the landlord's written consent, the same right as against the landlord on quitting his holding as the outgoing tenant would have had if he had remained on.

Charge on Holding to Secure Landlord Amount Paid for Compensation.

Where a landlord has paid compensation, he may obtain a charge upon the holding in respect thereof, payable in such instal-

ments, and with such interest as may be directed by the County Court to whom the application for the charge must be made. But if the landlord is not absolute owner, *e.g.*, if he is trustee—no instalment or interest is to be payable after the time when the improvement, in respect of which compensation is paid, will be taken to have been exhausted, according to the award of the referee, which must, in such case, specify such time; or, where there is no award, after the time when the improvement in the opinion of the Court, after hearing evidence, will have become exhausted.

The instalments and interest are charged in favour of the landlord, his executors, administrators and assigns (s. 29).

Recovery of Compensation from Landlord who is a Trustee.

Provision is made by s. 31 for the method of charging and recovering compensation from the landlord where he is a trustee.

Contracting Out.

It has been already mentioned (see *ante*, p. 564) that a landlord and tenant cannot make an agreement by which the tenant's right to compensation under the Act is taken away (see s. 55). But this prohibition does not extend to any such agreement for substituted compensation as is allowed by the Act (see s. 5). Further

the Act does not apply to any letting for less than *one* year, and therefore the tenant under a half-yearly or quarterly tenancy, determinable by notice at the end of any half-year or quarter, may make any arrangement with his landlord as to compensation.

Extension of Agricultural Holdings Act, 1883.

The principle of compensation for improvements has been extended by several Acts passed since the Agricultural Holdings Act, 1883. Most important of these are the Tenants' Compensation Act, 1890, and the Market Gardeners' Compensation Act, 1895, and they are incorporated with what may be called, for convenience, the Principal Act.

The Tenants' Compensation Act, 1890.—This Act alters the law with regard to the right of a tenant to claim compensation from a mortgagee of the property occupied by him.

Before the Conveyancing Act, 1881, a tenancy created by a mortgagor would not be binding upon the mortgagee, unless adopted by him, or unless created under an express power of leasing reserved to the mortgagor in the mortgage deed, and in cases to which the Conveyancing Act does not apply, this is still the law.* In order to give an occupying tenant under such circumstances the benefits which an ordinary tenant would enjoy by reason

* A limited power of leasing had been given by Statute.

of the Principal Act, the Act of 1890 gives to the occupier similar rights, as against a mortgagee taking possession, to compensation for crops, improvements, tillages, and other matters connected with the land ; but any sum ascertained to be due to the occupier for compensation may be set off against any rent or other sum due from him in respect of the land, but unless so set off shall be charged and recovered only in accordance with s. 31 of the Principal Act, *i.e.*, as if the mortgagee were the landlord within the meaning of that section (s. 1, sub-s. (1)).*

The Act of 1890 does not take away the mortgagee's right to eject the occupier, but limits it by providing that, before the tenant can be deprived of possession, otherwise than in accordance with his contract, the landlord must give him six months' written notice ; and if the occupier is so deprived, then he is to be entitled to compensation for his crops, and for any expenditure upon the land which he has made in expectation of holding it for the full term of his contract of tenancy, provided that any improvement resulting therefrom is not exhausted at the time when he is so deprived ; and such compensation shall be determined in the same way as compensation under the

* Section 31 of the Principal Act deals with the mode of estimating compensation where the landlord is only a trustee (see *ante*, p. 573).

Principal Act, and shall be set off, charged and recovered in the same way (s. 1, sub-s. (2)).

This sub-section (2) only applies to yearly tenancies, and tenancies for terms not exceeding twenty-one years at a rack rent.

The Market Gardeners' Compensation Act, 1893.—A further important development of the Principal Act, and incorporated therewith, is the Market Gardeners' Compensation Act, 1895. The Act came into force on January 1, 1896.

In cases where *after that date* there is a *written* agreement that a holding shall be either let or treated as a market garden, the following provisions (*inter alia*) are to apply:—

(1) Section 34 of the Principal Act (which gives the tenant a right to remove fixtures in buildings erected by him, or to the fair price thereof if elected to be purchased by the landlord, see *ante*, pp. 548-9) is to apply to every fixture or building affixed or erected by the tenant to or upon such holding for the purpose of his trade as a market gardener.

(2) The improvements numbered (1), (6) and (11) in Part I. of the First Schedule to the Principal Act (see *ante*, p. 565) are, as regards such holding, to be no longer comprised in that Schedule, that is to say, they are taken out of the Principal Act altogether as regards such market garden holdings, and in place of them the improvements to be presently enumerated

are brought under the operation of the present Act.

(3) The following improvements are, as regards such holdings, to be considered as comprised in Part III. of that Schedule, viz. :—

(i.) Planting of standard, or other fruit trees permanently set out.

(ii.) Planting of fruit bushes permanently set out.

(iii.) Planting of strawberry plants.

(iv.) Planting of asparagus, and other vegetable crops.

(v.) Erection or enlargement of buildings for the purposes of the trade or business of a market gardener.

(4) Section 56 of the Principal Act (see *ante*, p. 572) is to be read as if the words “with the consent in writing of his landlord” were omitted therefrom.

(5) The tenant may remove all fruit trees and fruit bushes planted by him on such holding, and not permanently set out; but he must remove them before the termination of his tenancy, otherwise they will remain the property of the landlord, and the tenant will not be entitled to any compensation in respect thereof (s. 3).

Application of Market Gardeners' Compensation Act to current tenancies.—The provisions of this Act are to apply to contracts of tenancies current on January 1, 1896, where the holding

is then *in fact used* or cultivated as a market garden *with the landlord's knowledge*, and the tenant has executed, without previous written notice of dissent by the landlord, any of the improvements in respect of which a right of compensation or removal is given by the Act, as if there had been a written agreement after that date that the holding should be let or treated as a market garden (s. 4).

In *King v. Eversfield* (1897), 2 Q.B. 475, it was held that a tenancy on which rent is payable on the usual quarter days is a tenancy from year to year within the meaning of s. 61 of the Agricultural Holdings Act, 1883, although determinable by three months' notice at any time, and therefore a tenant under such a contract current at the commencement of the Market Gardeners' Compensation Act is entitled to the benefit of s. 4 of the latter Act.

The term "market garden" is, for the purposes of this and the Principal Act, to mean a holding, or part of a holding, which is cultivated wholly or mainly for the purpose of the trade or business of market gardening (s. 6).

The Allotments and Cottage Gardens Compensation for Crops Act, 1887.—The principle of compensation for agricultural improvements has also been extended to the case of allotments of land and cottage gardens by the above-mentioned Act. An "allotment," for the purposes of this Act, means any parcel of land

of not more than two acres in extent held by a tenant under a landlord, and cultivated as a garden, or as a farm, or partly as a garden and partly as a farm; while "cottage garden" means "any allotment attached to a cottage" (s. 4).

On the termination of a tenancy of an allotment or cottage garden, the tenant is entitled, notwithstanding any agreement to the contrary, to obtain from the landlord compensation:—

(a) For crops, including fruit growing upon the holding in the ordinary course of cultivation, and for fruit trees and fruit bushes growing thereon, which have been planted by the tenant with the previous consent of the landlord;

(b) For labour expended upon, and for manure applied to the holding since the taking of the last crop therefrom in anticipation of a future crop;

(c) For drains, and for any outbuildings, pig-styes, fowl-houses, or other structural improvements made by the tenant upon his holding with the written consent of his landlord (s. 5).

Mode of ascertaining compensation.—In ascertaining any compensation payable to the tenant under this Act, there may be deducted any sum due to the landlord in respect of rent or of any breach of the contract of tenancy, or wilful or negligent damage committed or per-

mitted by the tenant (s. 6). If the parties cannot agree as to the compensation to be paid under the Act, it is to be settled by a single arbitrator to be appointed by them, or if they differ, by the justices of the peace of the petty sessional division (ss. 7, 8).

The award is to be final (s. 16). No claim may be made under the Agricultural Holdings Act, 1883, for any matter in respect of which a claim for compensation is made under this Act (s. 18).

The Tenants' Compensation Act, 1890, is to be read as one with this Act (Tenants' Compensation Act, 1890, s. 1).

Compensation in case of tenants of allotments.—As to the right of the tenant of an allotment to compensation, see Allotments Act, 1887, s. 8; and as to the right of the tenants of allotments and small holdings to remove buildings, fruit trees, etc., before the expiration of their tenancies, see Allotments Act, 1887, s. 7 (5), (6); Small Holdings Act, 1892, s. 4 (2).

CHAPTER XIV.

PROVISIONS OF THE CRIMINAL LAW RELATING TO LANDLORD AND TENANT.

(1) *Penalty for Letting Infected House or Lodgings.*

Any one who knowingly lets for hire a house, or part of a house, which has been occupied by persons suffering from any dangerous infectious disease without having the same disinfected to the satisfaction of a duly qualified medical practitioner—testified by his signed certificate—is liable to a penalty not exceeding £20 (see Public Health Act, 1875, s. 128).

For the purpose of this section an innkeeper shall be deemed to let for hire part of a house to any person admitted as a guest into his inn (*ib.*).

A penalty of £20 or one month's imprisonment may be incurred by falsely answering any question of an intended tenant as to any infected person being or having been within six weeks previously on the premise (*ib.*, s. 129).

As regards the administrative County of London, similar provisions are contained in the Public Health (London) Act, 1891, ss. 63, 64.

(2) *Penalty for Ceasing to occupy Infected House without Disinfection.*

The Infectious Diseases Prevention Act, 1890,* further imposes a maximum penalty of £10 on any person ceasing to occupy a house, or part of a house, where any one has within six weeks previously been suffering from any infectious disorder, without having the same and all articles therein disinfected as before-mentioned, or without first giving notice to the owner of the existence of such disease, and on every person so ceasing to occupy who, on being questioned by the owner, or by any intending tenant, as to the fact of there having within six weeks previously been thereon any one suffering from any infectious disease, knowingly makes a false statement in answer to such question (see s. 7; and as to the metropolis, compare the Public Health (London) Act, 1891, s. 65).

(3) *House of Ill Fame.*

Any landlord, or agent of a landlord letting, or being privy to the letting, or continued use of a house as a house of ill-fame, is liable to a penalty of £20, or imprisonment not exceeding three months, with or without hard labour (Criminal Law Amendment Act, 1885, s. 13).

* The Infectious Diseases Prevention Act is only in force in those urban or rural sanitary districts where it has been adopted by the sanitary authority.

(4) *Theft by Tenant or Lodger.*

If a tenant or lodger steals any chattels or fixtures let with the premises, he is liable to imprisonment for two years, with or without hard labour, and solitary confinement, and if a male under sixteen years of age, with or without whipping; and if the value of the chattels or fixtures exceeds £5, he is liable to penal servitude for not more than seven, nor less than three years, and with or without solitary confinement, and if a male under 16 years of age, with or without whipping (Larceny Act, 1861, s. 74).

(5) *Malicious Injury to Buildings by Tenants.*

It is a misdemeanour if a tenant for term of years, or any less period, or who holds over (as to this see *ante*, pp. 291-3, 538), maliciously demolishes, or begins to demolish, or pull down a building, or part of a building, or severs any fixtures from the building to which it is attached (Malicious Damage Act, 1861, s. 13).

(6) *Forcible Entry.*

We have already referred to this subject (see *ante*, p. 523). It is a criminal offence to make a forcible entry to recover possession of premises, and a man may arm himself and his friends in order to defend the possession of his *house* against anyone threatening an unlawful entry, though he may not do so in defence of his *land*

simply. An entry in order to be forcible must be violent, and such as to cause fear. Forcible entry is indictable both at common law and by statute, and may also be punished by summary process.

Forcible detainer—*i.e.*, violent keeping possession of premises without authority of law—is also a punishable offence.

A license by a tenant to his landlord to eject him without process of law is void, and no answer to a charge of forcible entry (*Edwicke v. Hawkes* (1881), 18 Ch. D. 199).

It has been held that the owner of property can forcibly eject a mere trespasser (see *Scott v. Brown* (1885), 51 L.T. 747).

APPENDICES

APPENDIX I.

STATUTES AND RULES.

- 1.—LANDLORD AND TENANT ACT, 1851.
- 2.—LODGERS' GOODS PROTECTION ACT, 1871.
- 3.—VENDOR AND PURCHASER ACT, 1874.
- 4.—CONVEYANCING ACT, 1881.
- 5.—CONVEYANCING ACT, 1882.
- 6.—AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.
- 7.—TENANTS' COMPENSATION ACT, 1890.
- 8.—CONVEYANCING ACT, 1892.
- 9.—LAW OF DISTRESS AMENDMENT ACT, 1888.
- 10.—RULES UNDER THE ACT.
- 11.—LAW OF DISTRESS AMENDMENT ACT, 1895.
- 12.—RULES UNDER THE ACT.
- 13.—MARKET GARDENERS' COMPENSATION ACT, 1895.

APPENDIX I.

STATUTES AND RULES.

LANDLORD AND TENANT ACT, 1851.

(14 and 15 Vict. c. 25.)

[24th July, 1851.]

I. Where the Lease or Tenancy of any Farm or Lands held by a tenant at Rackrent shall determine by the Death or Cesser of the Estate of any Landlord entitled for his Life, or for any other uncertain Interest, instead of Claims to Emblements, the Tenant shall continue to hold and occupy such Farm or Lands until the Expiration of the then current Year of his Tenancy, and shall then quit, upon the Terms of his Lease or Holding, in the same Manner as if such Lease or Tenancy were then determined by Effluxion of Time or other lawful Means during the Continuance of his Landlord's Estate; and the succeeding Landlord or Owner shall be entitled to recover and receive of the Tenant, in the same Manner as his Predecessor or such Tenant's Lessor could have done if he had been living or had continued the Landlord or Lessor, a fair Proportion of the Rent for the Period which may have elapsed from the Day of the Death or Cesser of the Estate of such Predecessor or Lessor to the Time of the Tenant so quitting, and the succeeding Landlord or Owner and the Tenant respectively shall, as between themselves and as against each other, be entitled to all the Benefits and Advantages, and be subject to the Terms, Conditions, and Restrictions, to which the preceding Landlord or Lessor and such Tenant respectively would have been entitled and subject in case the Lease or Tenancy had determined in manner aforesaid at the Expiration of such current Year: Provided always, that no Notice to quit shall be necessary or required by or from either Party to determine any such Holding and Occupation as aforesaid.

II. In case all or any part of the growing Crops of the Tenant of any Farm or Lands shall be seized and sold by any Sheriff or other Officer by virtue of any Writ of Fieri facias or other Writ of Execution, such Crops, so long as the same shall remain on the Farms or Lands, shall, in default of sufficient Distress of the Goods and Chattels of the Tenant, be liable to the Rent which may accrue and become due to the Landlord after any such Seizure and Sale, and to the Remedies by Distress for Recovery of such Rent, and that notwithstanding any Bargain and Sale or Assignment which may have been made or executed of such growing Crops by any such Sheriff or other Officer.

III. If any Tenant of a Farm or Lands shall, after the passing of this Act, with the Consent in Writing of the Landlord for the Time being, at his own Cost and Expense, erect any Farm-building, either detached or otherwise, or put up any other Building, Engine, or Machinery, either for Agricultural Purposes or for the Purposes of Trade and Agriculture, (which shall not have been erected or put up in pursuance of some Obligation in that Behalf,) then all such Buildings, Engines, and Machinery shall be the Property of the Tenant, and shall be removable by him, notwithstanding the same may consist of separate Buildings, or that the same or any Part thereof may be built in or permanently fixed to the Soil, so as the Tenant making any such Removal do not in anywise injure the Land or Buildings belonging to the Landlord, or otherwise do put the same in like Plight and Condition, or as good Plight and Condition, as the same were in before the Erection of anything so removed: Provided nevertheless, that no Tenant shall, under the Provision last aforesaid, be entitled to remove any such Matter or Thing as aforesaid without first giving to the Landlord or his Agent One Month's previous Notice in Writing of his Intention so to do; and thereupon it shall be lawful for the Landlord, or his Agent on his Authority, to elect to purchase the Matters and Things so proposed to be removed, or any of them, and the Right to remove the same shall thereby cease, and the same shall belong to the Landlord; and the Value thereof shall be ascertained and determined by Two Referees, One to be chosen by each Party, or by an Umpire to be named by such Referees, and shall be paid

or allowed in account by the Landlord who shall have so elected to purchase the same.

IV. If any occupying Tenant of Land shall quit, leaving unpaid any Tithe Rentcharge for or charged upon such Land which he was by the Terms of his Tenancy or Holding legally or equitably liable to pay, and the Tithe Owner shall give or have given Notice of proceeding by Distress upon the Land for Recovery thereof, it shall be lawful for the Landlord, or the succeeding Tenant or Occupier, to pay such Tithe Rentcharge, and any Expenses incident thereto, and to recover the Amount or Sum of Money which he may so pay over against such first-named Tenant or Occupier, or his legal Representatives, in the same Manner as if the same were a Debt by simple Contract due from such first-named Tenant or Occupier to the Landlord or Tenant making such Payment.

V. Nothing in this Act shall extend to *Scotland*.

THE LODGERS GOODS PROTECTION ACT.

(34 and 35 Vict. c. 79.)

[16th August, 1871.]

I. If any superior landlord shall levy or authorise to be levied a distress on any furniture, goods, or chattels of any lodger for arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord, or the bailiff or other person employed by him to levy such distress, with a declaration in writing made by such lodger, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property or in the lawful possession of such lodger; and also setting forth whether any and what rent is due and for what period from such lodger to his immediate landlord; and such lodger may pay to the superior landlord, or to the bailiff or other person employed by him as aforesaid, the rent if any so due as last aforesaid or so much thereof as shall be sufficient to discharge the claim of such superior landlord. And to such declaration shall be annexed a correct inventory, subscribed by the lodger, of the furniture,

goods, and chattels referred to in the declaration; and if any lodger shall make or subscribe such declaration and inventory, knowing the same or either of them to be untrue in any material particular, he shall be deemed guilty of a misdemeanor.

II. If any superior landlord, or any bailiff or other person employed by him, shall, after being served with the before-mentioned declaration and inventory, and after the lodger shall have paid or tendered to such superior landlord, bailiff, or other person the rent, if any, which by the last preceding section such lodger is authorised to pay, shall levy or proceed with a distress on the furniture, goods, or chattels of the lodger, such superior landlord, bailiff, or other person shall be deemed guilty of an illegal distress, and the lodger may apply to a justice of the peace for an order for the restoration to him of such goods; and such application shall be heard before a stipendiary magistrate, or before two justices in places where there is no stipendiary magistrate, and such magistrate or justices shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him or them may seem just, and the superior landlord shall also be liable to an action at law at the suit of the lodger, in which action the truth of the declaration and inventory may likewise be inquired into.

III. Any payment made by any lodger pursuant to the first section of this Act shall be deemed a valid payment on account of any rent due from him to his immediate landlord.

IV. This Act shall not extend to Scotland.

THE VENDOR AND PURCHASER ACT, 1874.

(37 and 38 Vict. c. 78.)

[7th August, 1874.]

1. In the completion of any contract of sale of land made after the thirty-first day of December one thousand eight hundred and seventy-four, and subject to any stipulation to the contrary in the contract

2. the obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say,

1. Under a contract to grant or assign a term of years whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold.

THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

(44 and 45 Vict. c. 41.)

[22nd August, 1881.]

I.—PRELIMINARY.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881.

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-one.

(3.) This Act does not extend to Scotland.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest.

(ii.) Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses, and other buildings, also an undivided share in land:

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income:

(iv.) Manor includes lordship, and reputed manor or lordship:

(v.) Conveyance, unless a contrary intention appears, includes assignment, . . . lease, . . . and other assurance, . . . made by deed, on a sale, mortgage, demise, . . . of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance:

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money, or money's worth, secured by a mortgage; and mortgagor includes any person from time

to time deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his estate, interest, or right, in the mortgaged property; and mortgagee, includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property:

(vii.) Incumbrance includes a mortgage in fee, or for a less estate and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof:

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser; but sale means only a sale properly so called:

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes:

(xiii.) Instrument includes deed, and Act of Parliament:

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy:

(xvi.) Writing includes print; and words referring to

any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract or other document being in writing or in print, or partly in writing and partly in print :

(xvii.) Person includes a corporation :

(xviii.) Her Majesty's High Court of Justice is referred to as the Court.

II.—SALES AND OTHER TRANSACTIONS.

Contracts for Sale.

3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(4.) Where land sold is held by lease (not including under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted ; and on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted ; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale,

and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

General Words.

6.—(1.) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land, houses or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the con-

veyance gives to him to the land expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

III.—LEASES.

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessees part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this Act.

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding

the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

Forfeiture.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief ;

and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

(3.) For the purpose of this section a lease includes an original or derivative under-lease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

(7.) The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.

(8.) This section shall not affect the law relating to

re-entry or forfeiture or relief in cases of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

IV.—MORTGAGES.

Leases.

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorised.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorises are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii.) A building lease for any term not exceeding ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to

erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connection with building purposes.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in

writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease, shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

.

XIII.—LONG TERMS.

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with

merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(2.) Each of the following persons (namely):—

- (i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term ; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence ;
- (ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not ;
- (iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not ;

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other

land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

MISCELLANEOUS.

67.—(1.) Any notice required or authorised by this Act to be served shall be in writing.

(2.) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent under disability, unborn, or unascertained.

(3.) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by

post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

CONVEYANCING ACT, 1882.

(45 and 46 Vict. c. 39.)

[10th August, 1882.]

PRELIMINARY.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser;

LEASES.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other in-

strument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

LONG TERMS.

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.

(46 and 47 Vict. c. 61.)

[25th August, 1883.]

PART I.—IMPROVEMENTS.

COMPENSATION FOR IMPROVEMENTS.

1. Subject as in this Act mentioned, where a tenant has made on his holding any improvement comprised in the First Schedule hereto, he shall, on and after the commencement of this Act, be entitled on quitting his holding at the determination of a tenancy to obtain from the landlord as compensation under this Act for such improvement such sum as fairly represents the value of the improvement to an incoming tenant: Provided always, that in estimating the value of any improvement in the First Schedule hereto there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.

AS TO IMPROVEMENTS EXECUTED BEFORE THE COMMENCEMENT OF ACT.

2. Compensation under this Act shall not be payable in respect of improvements executed before the commencement of this Act, with the exceptions following, that—

- (1.) Where a tenant has within ten years before the commencement of this Act made an improvement mentioned in the third part of the First Schedule hereto, and he is not entitled under any contract or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in respect of such improvement; or
- (2.) Where a tenant has executed an improvement mentioned in the first or second part of the said First Schedule within ten years previous to the commencement of this Act, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875, to compensation in respect of such improvement, and the landlord within one year after the commencement of this Act declares in writing his consent to the making of such improvement, then such tenant on quitting his holding at the determination of a tenancy after the commencement of this Act may claim compensation under this Act in respect of such improvement in the same manner as if this Act had been in force at the time of the execution of such improvement.

AS TO IMPROVEMENTS EXECUTED AFTER THE COMMENCEMENT OF ACT.

3. Compensation under this Act shall not be payable in respect of any improvement mentioned in the first part of the First Schedule hereto, and executed after the commencement of this Act, unless the landlord, or his agent duly authorised in that behalf, has, previously to the execution of the improvement and after the passing of this Act, consented in writing to the making of such improvement, and any such consent may be given by the landlord unconditionally or upon such terms as to compensation or otherwise, as may be agreed upon between the landlord and the tenant, and in the event of any agreement being made between the landlord and the

tenant, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act.

4. Compensation under this Act shall not be payable in respect of any improvement mentioned in the second part of the First Schedule hereto, and executed after the commencement of this Act, unless the tenant has, not more than three months and not less than two months before beginning to execute such improvement, given to the landlord, or his agent duly authorised in that behalf, notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given, the landlord and tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed, and in the event of any such agreement being made, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act, or the landlord may, unless the notice of the tenant is previously withdrawn, undertake to execute the improvement himself, and may execute the same in any reasonable and proper manner which he thinks fit, and charge the tenant with a sum not exceeding five pounds per centum per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum payable for a period of twenty-five years as will repay such outlay in the said period, with interest at the rate of three per centum per annum, such annual sum to be recoverable as rent. In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time, the tenant may execute the improvement himself, and shall in respect thereof be entitled to compensation under this Act.

The landlord and tenant may, if they think fit, dispense with any notice under this section, and come to an agreement in a lease or otherwise between themselves in the same manner and of the same validity as if such notice had been given.

5. Where, in the case of a tenancy under a contract of tenancy current at the commencement of this Act, any agreement in writing or custom, or the Agricultural Holdings (England) Act, 1875, provides specific compensation for any improvement comprised in the First

Schedule hereto, compensation in respect of such improvement, although executed after the commencement of this Act, shall be payable in pursuance of such agreement, custom, or Act of Parliament, and shall be deemed to be substituted for compensation under this Act.

Where in the case of a tenancy under a contract of tenancy beginning after the commencement of this Act, any particular agreement in writing secures to the tenant for any improvement mentioned in the third part of the First Schedule hereto, and executed after the commencement of this Act, fair and reasonable compensation, having regard to the circumstances existing at the time of making such agreement, then in such case the compensation in respect of such improvement shall be payable in pursuance of the particular agreement, and shall be deemed to be substituted for compensation under this Act.

The last preceding provision of this section relating to a particular agreement shall apply in the case of a tenancy under a contract of tenancy current at the commencement of this Act in respect of an improvement mentioned in the third part of the First Schedule hereto, specific compensation for which is not provided by any agreement in writing, or custom, or the Agricultural Holdings Act, 1875.

REGULATIONS AS TO COMPENSATION FOR IMPROVEMENTS.

6. In the ascertainment of the amount of the compensation under this Act payable to the tenant in respect of any improvement there shall be taken into account in reduction thereof:

- (a.) Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and
- (b.) In the case of compensation for manures the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except as far as a proper return of manure to the holding has been made in respect of such produce so sold off or removed therefrom; and

(c.) Any sums due to the landlord in respect of rent or in respect of any waste committed or permitted by the tenant, or in respect of any breach of covenant or other agreement connected with the contract of tenancy committed by the tenant, also any taxes, rates, and tithe rentcharge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord.

There shall be taken into account in augmentation of the tenant's compensation—

(d.) Any sum due to the tenant for compensation in respect of a breach of covenant or other agreement connected with a contract of tenancy and committed by the landlord.

Nothing in this section shall enable a landlord to obtain under this Act compensation in respect of waste by the tenant or of breach by the tenant committed or permitted in relation to a matter of husbandry more than four years before the determination of the tenancy.

PROCEDURE.

7. A tenant claiming compensation under this Act shall, two months at least before the determination of the tenancy, give notice in writing to the landlord of his intention to make such a claim.

Where a tenant gives such notice, the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim in respect of any waste or any breach of covenant or other agreement.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars and amount of the intended claim.

8. The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid under this Act

If in any case they do not so agree the difference shall be settled by a reference.

9. Where there is a reference under this Act, a referee, or two referees and an umpire, shall be appointed as follows:

(1.) If the parties concur, there may be a single referee appointed by them jointly:

- (2.) If before award the single referee dies or becomes incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed :
- (3.) If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee :
- (4.) If before award one of two referees dies or becomes incapable of acting, or for seven days after notice from either party requiring him to act, fails to act, the party appointing him shall appoint another referee :
- (5.) Notice of every appointment of a referee by either party shall be given to the other party :
- (6.) If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving notice, the county court shall within fourteen days appoint a competent and impartial person to be a referee :
- (7.) Where two referees are appointed, then (subject to the provisions of this Act) they shall before they enter on the reference appoint an umpire :
- (8.) If before award an umpire dies or becomes incapable of acting, the referees shall appoint another umpire :
- (9.) If for seven days after request from either party the referees fail to appoint an umpire, or another umpire, then, on the application of either party, the county court shall within fourteen days appoint a competent and impartial person to be the umpire :
- (10.) Every appointment, notice, and request under this section shall be in writing.
10. Provided that, where two referees are appointed an umpire may be appointed as follows :
 - (1.) If either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be appointed by the Land Commissioners for England, then the umpire, and any successor to him, shall be appointed, on the application of either party, by those commissioners.
 - (2.) In every other case, if either party on appointing a referee requires, by notice in writing to the other,

that the umpire shall be appointed by the county court, then, unless the other party dissents by notice in writing therefrom, the umpire, and any successor to him, shall on the application of either party be so appointed, and in case of such dissent the umpire, and any successor to him, shall be appointed, on the application of either party, by the Land Commissioners for England.

11. The powers of the county court under this Act relative to the appointment of a referee or umpire shall be exercisable by the judge of the court having jurisdiction, whether he is without or within his district, and may, by consent of the parties be exercised by the registrar of the court.

12. The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it; and neither party shall have power to revoke a submission, or the appointment of a referee, without the consent of the other.

13. The referee or referees or umpire may call for the production of any sample, or voucher, or other document, or other evidence which is in the possession or power of either party, or which either party can produce, and which to the referee or referees or umpire seems necessary for determination of the matters referred, and may take the examination of the parties and witnesses on oath, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

14. The referee or referees or umpire may proceed in the absence of either party where the same appears to him or them expedient, after notice given to the parties.

15. The award shall be in writing, signed by the referee or referees or umpire.

16. A single referee shall make his award ready for delivery within twenty-eight days after his appointment.

Two referees shall make their award ready for delivery within twenty-eight days after the appointment of the last appointed of them, or within such extended time (if any) as they from time to time jointly fix by writing under their hands, so that they make their award ready for delivery within a time not exceeding in the whole

forty-nine days after the appointment of the last appointed of them.

17. In any case provided for by sections three, four, or five, if compensation is claimed under this Act, such compensation as under any of those sections is to be deemed to be substituted for compensation under this Act, if and so far as the same can, consistently with the terms of the agreement, if any, be ascertained by the referees or the umpire, shall be awarded in respect of any improvements thereby provided for, and the award shall, when necessary, distinguish such improvements and the amount awarded in respect thereof; and an award given under this section shall be subject to the appeal provided by this Act.

18. Where two referees are appointed and act, if they fail to make their award ready for delivery within the time aforesaid, then, on the expiration of that time, their authority shall cease, and thereupon the matters referred to them shall stand referred to the umpire.

The umpire shall make his award ready for delivery within twenty-eight days after notice in writing given to him by either party or referee of the reference to him, or within such extended time (if any) as the registrar of the county court from time to time appoints, on the application of the umpire or of either party, made before the expiration of the time appointed by or extended under this section.

19. The award shall not award a sum generally for compensation, but shall, so far as possible, specify—

- (a.) The several improvements, acts, and things in respect whereof compensation is awarded, and the several matters and things taken into account under the provisions of this Act in reduction or augmentation of such compensation;
- (b.) The time at which each improvement, act, or thing was executed, done, committed, or permitted;
- (c.) The sum awarded in respect of each improvement, act, matter, and thing; and
- (d.) Where the landlord desires to charge his estate with the amount of compensation found due to the tenant, the time at which, for the purposes of such charge, each improvement, act, or thing in respect of which compensation is awarded is to be deemed to be exhausted.

20. The costs of and attending the reference, including the remuneration of the referee or referees and umpire, where the umpire has been required to act, and including other proper expenses, shall be borne and paid by the parties in such proportion as to the referee or referees or umpire appears just, regard being had to the reasonableness or unreasonableness of the claim of either party in respect of amount, or otherwise, and to all the circumstances of the case.

The award may direct the payment of the whole or any part of the costs aforesaid by the one party to the other.

The costs aforesaid shall be subject to taxation by the registrar of the county court, on the application of either party, but that taxation shall be subject to a review by the judge of the county court.

21. The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of money awarded for compensation, costs, or otherwise.

22. A submission or award shall not be made a rule of any court, or be removable by any process into any court, and an award shall not be questioned otherwise than as provided by this Act.

23. Where the sum claimed for compensation exceeds one hundred pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the county court on all or any of the following grounds:

- (1.) That the award is invalid;
 - (2.) That the award proceeds wholly or in part upon an improper application of or upon the omission properly to apply the special provisions of sections three, four, or five of this Act;
 - (3.) That compensation has been awarded for improvements, acts, or things, breaches of covenants, or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation;
 - (4.) That compensation has not been awarded for improvements, acts, or things, breaches of covenants, or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation;
- and the judge shall hear and determine the appeal, and

may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or umpire, with such directions as he may think fit.

If no appeal is so brought, the award shall be final.

The decision of the judge of the county court on appeal shall be final, save that the judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice, and the decision of the High Court on the case, and respecting costs and any other matter connected therewith, shall be final, and the judge of the county court shall act thereon.

24. Where any money agreed or awarded or ordered on appeal to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded or ordered to be paid, it shall be recoverable, upon order made by the judge of the county court, as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable.

25. Where a landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the county court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may change the guardian if and as occasion requires.

26. Where the appointment of a person to act as the next friend of a married woman is required for the purposes of this Act, the county court may make such appointment, and may remove or change that next friend if and as occasion requires.

A woman married before the commencement of the Married Women's Property Act, 1882, entitled for her separate use to land, her title to which accrued before such commencement as aforesaid, and not restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.

Where any other woman married before the commencement of the Married Women's Property Act, 1882, is desirous of doing any act under this Act in respect of land, her title to which accrued before such commencement as aforesaid, her husband's concurrence shall

be requisite, and she shall be examined apart from him by the county court, or by the judge of the county court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

27. The costs of proceedings in the county court under this Act shall be in the discretion of the court.

The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the court.

28. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served.

CHARGE OF TENANT'S COMPENSATION.

29. A landlord, on paying to the tenant the amount due to him in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, or on expending such amount as may be necessary to execute an improvement under the second part of the First Schedule hereto, after notice given by the tenant of his intention to execute such improvement in accordance with this Act, shall be entitled to obtain from the county court a charge on the holding, or any part thereof, to the amount of the sum so paid or expended.

The court shall, on proof of the payment or expenditure, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, make an order charging the holding, or any part thereof, with repayment of the amount paid or expended, with such interest, and by such instalments,

and with such directions for giving effect to the charge, as the court thinks fit.

But where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, where an award has been made, be taken to have been exhausted according to the declaration of the award, and in any other case after the time when any such improvement will in the opinion of the court, after hearing such evidence (if any) as it thinks expedient, have become exhausted.

The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assigns.

The estate or interest of any landlord holding for an estate or interest determinable or liable to forfeiture by reason of his creating or suffering any charge thereon shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

Capital money arising under the Settled Land Act, 1882, may be applied in payment of any monies expended and costs incurred by a landlord under or in pursuance of this Act in or about the execution of any improvement mentioned in the first or second parts of the schedule hereto, as for an improvement authorised by the said Settled Land Act; and such money may also be applied in discharge of any charge created on a holding under or in pursuance of this Act in respect of any such improvement as aforesaid, as in discharge of an incumbrance authorised by the said Settled Land Act to be discharged out of such capital money.

30. The sum charged by the order of a county court under this Act shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; but so that the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assigns, in the tenancy where the landlord is himself a tenant of the holding.

31. Where the landlord is a person entitled to receive the rents and profits of any holding as trustee, or in any character otherwise than for his own benefit, the amount due from such landlord in respect of compensation under this Act, or in respect of compensation authorised by this Act to be substituted for compensation under this Act, shall be charged and recovered as follows and not otherwise; (that is to say,)

- (1.) The amount so due shall not be recoverable personally against such landlord, nor shall he be under any liability to pay such amount, but the same shall be a charge on and recoverable against the holding only.
- (2.) Such landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the county court a charge on the holding to the amount of the sum required to be paid or which has been paid, as the case may be, to the tenant.
- (3.) If such landlord neglect or fail within one month after the tenant has quitted his holding to pay to the tenant the amount due to him, then after the expiration of such one month the tenant shall be entitled to obtain from the county court in favour of himself, his executors, administrators, and assigns, a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge or in raising the amount due thereunder.
- (4.) The court shall on proof of the tenant's title to have a charge made in his favour make an order charging the holding with payment of the amount of the charge, including costs, in like manner and form as in case of a charge which a landlord is entitled to obtain.

32. Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by a county court under the provisions of this Act, upon such terms and conditions as may be agreed upon between such company and the person entitled to such charge; and such company may assign

any charge so acquired by them to any person or persons whomsoever.

NOTICE TO QUIT.

33. Where a half year's notice, expiring with a year of tenancy is by law necessary and sufficient for determination of a tenancy from year to year, in the case of any such tenancy under a contract of tenancy made either before or after the commencement of this Act, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same, unless the landlord and tenant of the holding, by writing under their hands, agree that this section shall not apply, in which case a half-year's notice shall continue to be sufficient; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

FIXTURES.

34. Where after the commencement of this Act a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture or building shall be the property of and be removable by the tenant before or within a reasonable time after the termination of the tenancy.

Provided as follows:—

- (1.) Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect to the holding:
- (2.) In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding:
- (3.) Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal:

- (4.) The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it :
- (5.) At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding ; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal).

RESUMPTION FOR IMPROVEMENTS, AND MISCELLANEOUS.

41. Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes :

The erection of farm labourers' cottages or other houses, with or without gardens ;

The providing of gardens for existing farm labourers' cottages or other houses ;

The allotment for labourers of land for gardens or other purposes ;

The planting of trees ;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith ;

The obtaining of brick earth, gravel, or sand ;

The making of a watercourse or reservoir ;

The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith ;

and the notice to quit so states, then it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding.

In every such case the provisions of this Act respecting compensation shall apply as on determination of a tenancy in respect of an entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit, and in respect of any depreciation of the value to him of the residue of the holding, caused by the withdrawal of that land from the holding or by the use to be made thereof, and the amount of that reduction shall be ascertained by agreement or settled by a reference under this Act, as in case of compensation (but without appeal).

The tenant shall further be entitled, at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

42. Subject to the provisions of this Act in relation to Crown, duchy, ecclesiastical, and charity lands, a landlord, whatever may be his estate or interest in his holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act which he might give or make or do or have done to him if he were in the case of an estate of inheritance owner thereof in fee, and in the case of a leasehold possessed of the whole estate in the leasehold.

43. When by any Act of Parliament, deed, or other instrument, a lease of a holding is authorised to be made, provided that the best rent, or reservation in the nature of rent, is by such lease reserved, then, whenever any lease of a holding is, under such authority, made to the tenant of the same, it shall not be necessary, in estimating such rent or reservation, to take into account against the tenant the increase (if any) in the value of such holding arising from any improvements made or paid for by him on such holding.

PART II.

DISTRESS.

44. After the commencement of this Act it shall not be lawful for any landlord entitled to the rent of any

holding to which this Act applies to distrain for rent, which became due in respect of such holding, more than one year before the making of such distress, except in the case of arrears of rent in respect of a holding to which this Act applies existing at the time of the passing of this Act, which arrears shall be recoverable by distress up to the first day of January, one thousand eight hundred and eighty-five to the same extent as if this Act had not passed.

Provided that where it appears that according to the ordinary course of dealing between the landlord and tenant of a holding the payment of the rent of such holding has been allowed to be deferred until the expiration of a quarter of a year or half a year after the date at which such rent legally became due, then for the purpose of this section the rent of such holding shall be deemed to have become due at the expiration of such quarter or half year as aforesaid, as the case may be, and not at the date at which it legally became due.

45. Where live stock belonging to another person has been taken in by the tenant of a holding to which this Act applies to be fed at a fair price agreed to be paid for such feeding by the owner of such stock to the tenant, such stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and if so distrained by reason of other sufficient distress not being found, there shall not be recovered by such distress a sum exceeding the amount of the price so agreed to be paid for the feeding, or if any part of such price has been paid exceeding the amount remaining unpaid, and it shall be lawful for the owner of such stock, at any time before it is sold, to redeem such stock by paying to the distrainer a sum equal to such price as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding: Provided always, that so long as any portion of such live stock shall remain on the said holding the right to distrain such portion shall continue to the full extent of the price

originally agreed to be paid for the feeding of the whole of such live stock, or if part of such price has been bona fide paid to the tenant under the agreement, then to the full extent of the price then remaining unpaid.

Agricultural or other machinery which is the bona fide property of a person other than the tenant, and is on the premises of the tenant under a bona fide agreement with him for the hire or use thereof in the conduct of his business, and live stock of all kinds which is the bona fide property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, shall not be distrained for rent in arrear.

46. Where any dispute arises—

(a) in respect of any distress having been levied contrary to the provisions of this Act; or

(b) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of such stock; or

(c) as to any other matter or thing relating to a distress on a holding to which this Act applies:

such dispute may be heard and determined by the county court or by a court of summary jurisdiction, and any such county court or court of summary jurisdiction may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid in the case where the price of the feeding is required to be ascertained, or may make any other order which justice requires; any such dispute as mentioned in this section shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts, but any person aggrieved by any decision of such court of summary jurisdiction under this section may, on giving such security to the other party as the court may think just, appeal to a court of general or quarter sessions.

47. Where the compensation due under this Act, or under any custom or contract, to a tenant has been ascertained before the landlord distrains for rent due, the amount of such compensation may be set off against the rent due, and the landlord shall not be entitled to distrain for more than the balance.

48. An order of the county court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by certiorari or otherwise into any superior court.

49. No person whatsoever making any distress for rent on a holding to which this Act applies when the sum demanded and due shall exceed the sum of twenty pounds for or in respect of such rent shall be entitled to any other or more costs and charges for and in respect of such distress or any matter or thing done therein than such as are fixed and set forth in the Second Schedule hereto.

50. So much of an Act passed in the second year of the reign of their Majesties King William the Third and Mary, chapter five, as requires appraisement before sale of goods distrained is hereby repealed as respects any holding to which this Act applies, and the landlord or other person levying a distress on such holding may sell the goods and chattels distrained without causing them to be previously appraised; and for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels, be removed to a public auction room or to some other fit and proper place specified in such request and be there sold. The costs and expenses attending any such removal, and any damage to the goods and chattels arising therefrom, shall be borne and paid by the party requesting the removal.

51. The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant or owner of goods and chattels distrained may replevy the same shall, in the case of any distress on a holding to which this Act applies, be extended to a period of not more than fifteen days, if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional costs that may be occasioned by such extension of time. Provided that the landlord or person levying the distress may, at the written request or with the written consent of the tenant, or such owner as aforesaid, sell the goods and chattels

distrained or part of them at any time before the expiration of such extended period as aforesaid.

52. From and after the commencement of this Act no person shall act as a bailiff to levy any distress on any holding to which this Act applies unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of the judge of the county court; and every county court judge shall, on or before the thirty-first day of December one thousand eight hundred and eighty-three, and afterwards from time to time as occasion shall require, appoint a competent number of fit and proper persons to act as such bailiffs as aforesaid. If any person so appointed shall be proved to the satisfaction of the said judge to have been guilty of any extortion or other misconduct in the execution of his duty as a bailiff, he shall be liable to have his appointment summarily cancelled by the said judge.

PART III.

GENERAL PROVISIONS.

53. This Act shall come into force on the first day of January, one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

54. Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden, or to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord.

55. Any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement mentioned in the First Schedule hereto (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act), shall, so far as it deprives him of such right, be void both at law and in equity.

56. Where an incoming tenant has, with the consent in writing of his landlord, paid to an outgoing tenant

any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, such incoming tenant shall be entitled on quitting the holding to claim compensation in respect of such improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted the holding at the time at which the incoming tenant quits the same.

57. A tenant shall not be entitled to claim compensation by custom or otherwise than in manner authorised by this Act in respect of any improvement for which he is entitled to compensation under or in pursuance of this Act, but where he is not entitled to compensation under or in pursuance of this Act he may recover compensation under any other Act of Parliament, or any agreement or custom, in the same manner as if this Act had not passed.

58. A tenant who has remained in his holding during a change or changes of tenancy shall not thereafter on quitting his holding at the determination of a tenancy be deprived of his right to claim compensation in respect of improvements by reason only that such improvements were made during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.

59. Subject as in this section mentioned, a tenant shall not be entitled to compensation in respect of any improvements, other than manures as defined by this Act, begun by him, if he holds from year to year, within one year before he quits his holding, or at any time after he has given or received final notice to quit, and, if he holds as a lessee, within one year before the expiration of his lease.

A final notice to quit means a notice to quit which has not been waived or withdrawn, but has resulted in the tenant quitting his holding.

The foregoing provisions of this section shall not apply in the case of any such improvement as aforesaid—

- (1.) Where a tenant from year to year has begun such improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter

given by the landlord, has quitted his holding at the expiration of that year ; and

- (2.) Where a tenant, whether a tenant from year to year or a lessee, previously to beginning any such improvement, has served notice on his landlord of his intention to begin the same, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement.

60. Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste, emblements, tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing.

61. In this Act—

“Contract of tenancy” means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year :

A tenancy from year to year under a contract of tenancy current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of this Act until the first day on which either the landlord or tenant of such tenancy could, the one by giving notice to the other immediately after the commencement of this Act, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act :

“Determination of tenancy” means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause :

“Landlord” in relation to a holding means any person for the time being entitled to receive the rents and profits of any holding :

“Tenant” means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year :

“Tenant” includes the executors, administrators, as-

signs, legatee, devisee, or next-of-kin, husband, guardian, committee of the estate or trustees in bankruptcy of a tenant, or any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of such executors, administrators, assigns, and other persons as aforesaid:

“Holding” means any parcel of land held by a tenant:

“County court,” in relation to a holding, means the county court within the district whereof the holding or the larger part thereof is situate:

“Person” includes a body of persons and a corporation aggregate or sole:

“Live stock” includes any animal capable of being distrained:

“Manures” means any of the improvements numbered twenty-two and twenty-three in the third part of the First Schedule hereto:

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

62. On and after the commencement of this Act, the Agricultural Holdings (England) Act, 1875, and the Agricultural Holdings (England) Act, 1875, Amendment Act, 1876, shall be repealed.

Provided that such repeal shall not affect—

- (a.) any thing duly done or suffered, or any proceedings pending under or in pursuance of any enactment hereby repealed; or
- (b.) any right to compensation in respect of improvements to which the Agricultural Holdings (England) Act, 1875, applies, and which were executed before the commencement of this Act; or
- (c.) any right to compensation in respect of any improvement to which the Agricultural Holdings (England) Act, 1875, applies, although executed by a tenant after the commencement of this Act if made under a contract of tenancy current at the commencement of this Act; or
- (d.) any right in respect of fixtures affixed to a holding before the commencement of this Act;

and any right reserved by this section may be enforced after the commencement of this Act in the same manner in all respects as if no such repeal had taken place.

63. This Act may be cited for all purposes as the Agricultural Holdings (England) Act, 1883.

64. This Act shall not apply to Scotland or Ireland.

FIRST SCHEDULE.

PART I.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

- (1.) Erection or enlargement of buildings.
- (2.) Formation of silos.
- (3.) Laying down of permanent pasture.
- (4.) Making and planting of osier beds.
- (5.) Making of water meadows or works of irrigation.
- (6.) Making of gardens.
- (7.) Making or improving of roads or bridges.
- (8.) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
- (9.) Making of fences.
- (10.) Planting of hops.
- (11.) Planting of orchards or fruit bushes.
- (12.) Reclaiming of waste land.
- (13.) Warping of land.
- (14.) Embankment and sluices against floods.

PART II.

IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

- (15.) Drainage.

PART III.

IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS NOT REQUIRED.

- (16.) Boning of land with undissolved bones.
- (17.) Chalking of land.
- (18.) Clay-burning.
- (19.) Claying of land.
- (20.) Liming of land.
- (21.) Marling of land.

- (22.) Application to land of purchased artificial or other purchased manure.
- (23.) Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.

SECOND SCHEDULE.

Levying distress. Three per centum on any sum exceeding £20 and not exceeding £50. Two and a half per centum on any sum exceeding £50.

To bailiff for levy, £1 1s.

To man in possession, if boarded, 3s. 6d. per day; if not boarded, 5s. per day.

For advertisements the sum actually paid.

To auctioneer. For sale five pounds per centum on the sum realised not exceeding £100, and four per centum on any additional sum realised not exceeding £100, and on any sum exceeding £200 three per centum. A fraction of £1 to be in all cases considered £1.

Reasonable costs and charges where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress; such costs and charges in case the parties differ to be taxed by the registrar of the county court of the district in which the distress is made. (See 51 and 52 V. c. 21 post.)

TENANTS COMPENSATION ACT, 1890.

(53 and 54 Vict. c. 57.)

[18th August, 1890.]

1. This Act shall be construed as one with the Agricultural Holdings Act, 1883, and the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (in this Act referred to as the principal Acts), and this Act may be cited as the Tenants Compensation Act, 1890.

2. Where a person occupies land under a contract of tenancy with the mortgagor, whether made before or after the passing of this Act, which is not binding on the mortgagee of such land, then—

- (1.) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensa-

tion which is, or would but for the mortgagee taking possession be due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the land, whether under the principal Acts or the custom of the country, or agreements sanctioned by the principal Acts ;

Provided that any sum ascertained to be due to the occupier for such compensation or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the land, and recovered as compensation under the principal Acts, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance only with section thirty-one of the Agricultural Holdings Act, 1883, as if the mortgagee were the landlord within the meaning of that section.

- (2.) Before the mortgagee deprives the occupier of possession of the land otherwise than in accordance with the said contract, he shall give to the occupier six months' notice in writing of his intention so to deprive him, and if he so deprives him compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived, and such compensation shall be determined in like manner as compensation under the principal Acts, and shall be set off, charged, and recovered in manner before provided in this section. This sub-section shall only apply where the said contract is for a tenancy from year to year, or for a term of years not exceeding twenty-one, at a rack-rent.

3. Where compensation for improvements comprised in Part One or Part Two of the First Schedule to the Agricultural Holdings (England) Act, 1883, is charged by an order under section thirty-one of that Act, the charge shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, and shall be registered accordingly.

4. This Act shall not apply to provisions for the payment of tithe rentcharge arising under the Tithe Commutation Act, and subsequent Acts relating thereto.

CONVEYANCING AND LAW OF PROPERTY ACT, 1892.

(55 and 56 Vict. c. 13.)

[20th June, 1892.]

PRELIMINARY.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1892, and the Conveyancing and Law of Property Act, 1881, and the Conveyancing Act, 1882, and this Act shall be read together and may be cited together as the Conveyancing Acts, 1881, 1882, and 1892.

(2.) This Act does not extend to Scotland.

LEASES, UNDER-LEASES, FORFEITURE.

2.—(1.) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor by writing under his hand, or from which the lessee is relieved, under the provisions of the Conveyancing and Law of Property Act, 1881, or of this Act.

(2.) Sub-section six of section fourteen of the Conveyancing and Law of Property Act, 1881, is to apply to a condition for forfeiture on bankruptcy of the lessee, or on taking in execution of the lessee's interest only after the expiration of one year from the date of the bankruptcy, or taking in execution, and provided the lessee's interest be not sold within such one year, but in case the lessee's interest be sold within such one year, sub-section six shall cease to be applicable thereto.

(3.) Sub-section two of this section is not to apply to any lease of—

(a.) Agricultural or pastoral land :

(b.) Mines or minerals :

(c.) A house used or intended to be used as a public-house or beer-shop:

(d.) A house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures:

(e.) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

3. In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

4. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry, or forfeiture under any covenant, proviso, or stipulation in a lease, the court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

5. In section fourteen of the Conveyancing and Law of Property Act, 1881, as amended by this Act, and in this Act, "lease" shall also include an agreement for a lease where the lessee has become entitled to have his lease

granted, and “under-lease” shall also include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted, and in this Act “under-lessee” shall include any person deriving title under or from an under-lessee.

LAW OF DISTRESS AMENDMENT ACT, 1888.

(51 and 52 Vict., c. 21.)

1. This Act may be cited as the Law of Distress Amendment Act, 1888.

2. This Act shall not apply to Scotland or Ireland.

3. This Act, except as in this Act otherwise provided, shall come into operation from and immediately after the thirty-first day of October one thousand eight hundred and eighty-eight.

4. From and after the passing of this Act the following goods and chattels shall be exempt from distress for rent; namely, any goods or chattels of the tenant or his family which would be protected from seizure in execution under section ninety-six of the County Courts Act, 1846, or any enactment amending or substituted for the same.

Provided that this enactment shall not extend to any case where the lease, term, or interest of the tenant has expired, and where possession of the premises in respect of which the rent is claimed has been demanded and where the distress is made not earlier than seven days after such demand.

5. So much of an Act passed in the second year of the reign of their Majesties King William the Third and Mary, chapter five, as requires appraisement before sale of goods distrained is hereby repealed, except in cases where the tenant or owner of the goods and chattels by writing requires such appraisement to be made, and the landlord or other person levying a distress may, except as aforesaid, sell the goods and chattels distrained without causing them to be previously appraised; and for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels, be removed to a public auction room or to some other fit and proper place specified in such request, and be there sold. The costs

and expenses of appraisement when required by the tenant or owner shall be borne and paid by him ; and the costs and expenses attending any such removal, and any damage to the goods and chattels arising therefrom, shall be borne and paid by the person requesting the removal.

6. The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant or owner of goods and chattels distrained may replevy the same, shall be extended to a period of not more than fifteen days if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional cost that may be occasioned by such extension of time : Provided that the landlord or person levying the distress may, at the written request, or with the written consent, of the tenant, or such owner as aforesaid, sell the goods and chattels distrained, or part of them, at any time before the expiration of such extended period as aforesaid.

7. From and after the commencement of this Act no person shall act as a bailiff to levy any distress for rent unless he shall be authorised to act as a bailiff by a certificate in writing under the hand of a county court judge ; and such certificate may be general or apply to a particular distress or distresses, and may be granted at any time after the passing of this Act in such manner as may be prescribed by rules under this Act. If any person holding a certificate shall be proved to the satisfaction of the judge of a county court to have been guilty of any extortion or other misconduct in the execution of his duty as a bailiff he shall be liable to have his certificate summarily cancelled by the said judge.

Nothing in this section shall be deemed to exempt such bailiff from any other penalty or proceeding to which he may be liable in respect of such extortion or misconduct.

A county court registrar may exercise the power of granting certificates hereby conferred upon a county court judge in cases in which he may be authorised to do so by rules made under this Act.

If any person not holding a certificate under this section shall levy a distress contrary to the provisions

of this Act, the person so levying, and any person who has authorised him so to levy, shall be deemed to have committed a trespass.

8. After the passing of this Act the Lord Chancellor may from time to time make, alter, and revoke rules—

(1.) For regulating the security (if any) to be required from bailiffs ;

(2.) For regulating the fees, charges and expenses in and incidental to distresses ; and

(3.) For carrying into effect the objects of this Act.

9. Sections forty-nine, fifty, fifty-one, and fifty-two of the Agricultural Holdings (England) Act, 1883, are hereby repealed from and after the commencement of this Act, but this repeal shall not affect anything done or suffered before the commencement of this Act under these sections.

RULES MADE PURSUANT TO SECTION EIGHT OF THE LAW OF DISTRESS AMENDMENT ACT, 1888.

1. These rules may be cited as the Distress for Rent Rules, 1888.

2. Certificates granted under the Law of Distress Amendment Act, 1888, hereafter called the Act, may be either general or special. A special certificate shall specify the particular distress or distresses to which it applies. Certificates shall be in the Forms Nos. 1 and 2 in Appendix I. to these Rules, with such variations as circumstances may require.

3. A special certificate may be granted by the judge or registrar, but a general certificate shall only be granted by the judge in person.

4. A general certificate shall authorise the bailiff named in it to levy at any place in England or Wales.

5. Any person (not being an officer of a County Court) holding a certificate under the Agricultural Holdings Act, 1883, shall on application be entitled to obtain, without fee, a general certificate.

6. No certificate shall be granted to any officer of a County Court.

7. Any practising solicitor of the Supreme Court shall, on application, and on payment of the prescribed fee, be entitled to a general or special certificate.

8. A general or special certificate may, on payment of the prescribed fee, be granted to any applicant who

satisfies the authority granting the same that he is a fit and proper person to hold the certificate.

9. Where the applicant for a certificate is not a ratepayer, rated on a rateable value of not less than £25 per annum, he may, if the authority applied to thinks fit, be required to give security for the due performance of his duties.

10. The security shall be security to the satisfaction of the registrar. In the cases of a general certificate the amount shall be £20, and in the case of a special certificate the amount shall be £5.

11. The security shall be given to the registrar. It may be given by deposit, or by bond, or by guarantee, as the registrar may think fit.

12. On any application to cancel a certificate the judge may, whether he cancels the certificate or not, order that the security shall be forfeited either wholly or in part, and that the amount directed to be forfeited shall be paid to the party aggrieved.

13. Where the judge orders that the security shall be forfeited, either wholly or in part, but does not cancel the certificate, he may direct that the bailiff shall give fresh security as a condition of retaining his certificate.

14. Subject to Rule 12, where a certificate is cancelled by the judge, the security shall also be cancelled, and the deposit (if any) returned.

15. No person shall be entitled to any fees, charges, or expenses for levying a distress, or for doing any act or thing in relation thereto, other than those specified in, and authorised by, the table in Appendix II. to these Rules.

16. Where the rent due exceeds £20, the fees, charges, and expenses specified in Scale I. shall be allowed, and where the rent due does not exceed £20, the fees, charges, and expenses specified in Scale II. shall be allowed.

17. In case of any difference as to fees, charges, and expenses between the parties, or any of them, the fees, charges, and expenses shall be taxed by the registrar of the district in which the distress is levied. The registrar may make such order as he thinks fit as to the costs of such taxation.

18. A copy of the table of fees, charges, and expenses authorised by these Rules shall be posted up by the

registrar in a conspicuous place in his office, and every bailiff levying a distress shall, on the request of the tenant, produce to him his certificate and a copy of the table.

19. "Judge" means a judge of County Courts.

"Certificate" means a certificate to act as bailiff under section seven of the Act.

"Registrar" means registrar of a County Court, and each registrar where there is more than one, and includes a deputy registrar.

(Signed) HALSBURY, C.

August 31, 1888.

APPENDIX I.

FORM 1.—GENERAL CERTIFICATE.

[Date.]

In the County Court of _____, holden at _____
 Pursuant to section seven of the Law of
 Distress Amendment Act, 1888, I hereby
 authorise A.B. of _____ to act as
 bailiff to levy distresses for rent in England and
 Wales.

(LS)

(Signed) _____

Judge.

FORM 2.—SPECIAL CERTIFICATE.

[Date.]

In the County Court of _____, holden at _____
 Pursuant to section seven of the Law of
 Distress Amendment Act, 1888, I hereby
 authorise A.B., of _____ to act as
 a bailiff to levy a distress on the premises of
 C.D., of _____ for rent alleged to be
 due to E.F., of _____

(LS)

(Signed) _____

Judge.
 or Registrar.

APPENDIX II.

TABLE OF FEES, CHARGES AND EXPENSES.

SCALE I.

Distresses for Rent where the Sum demanded and due shall exceed £20.

For levying distress. Three per cent. on any sum exceeding £20 and not exceeding £50. Two and a

half per cent. on any sum exceeding £50 and not exceeding £200 ; and one per cent. on any additional sum.

For man in possession, 5s. per day ; to provide his own board in every case.

For advertisements the sum actually and necessarily paid.

For commission to the auctioneer. On sale by auction seven and a half per cent. on the sum realised not exceeding £100, five per cent. on the next £200, four per cent. on the next £200, and on any sum exceeding £500 three per cent. up to £1,000, and two and a half per cent. on any sum exceeding £1,000. A fraction of £1 to be in all cases reckoned as £1.

Reasonable fees, charges, and expenses (subject to Rule 17) where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress.

For appraisement, on tenant's written request, whether by one broker or more, 6d. in the pound on the value as appraised, in addition to the amount for the stamp.

SCALE II.

Distresses for Rent when the Sum demanded and due shall not exceed £20.

For levying distress, 3s.

For man in possession, 4s. 6d. per day ; to provide his own board in every case.

For appraisement, on the tenant's written request, whether by one broker or more, 6d. in the pound on the value as appraised, in addition to the amount for the stamp.

For all expenses of advertisements, if any, 10s.

Catalogues, sale and commission, and delivery, 1s. in the pound on the net produce of the sale.

For removal at tenant's request, the reasonable expenses (subject to Rule 17) attending such removal.

COURT FEES.

TREASURY ORDER REGULATING FEES (LAW OF DISTRESS AMENDMENT ACT, 1888).

In pursuance of the powers given by the County Courts Acts, and all other powers enabling us in this

behalf, we, the undersigned, two of the Commissioners of Her Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that the several fees, or sums in the name of fees, specified in the Schedule hereunder written, shall be taken on the proceedings therein mentioned, and that the fees so authorised to be taken shall be received by the registrars for the use of themselves.

(Signed) HERBERT EUSTACE MAXWELL.
 „ SIDNEY HERBERT.

15th September, 1888.

I approve of the annexed Schedule of Fees.

(Signed) HALSBURY, C.

SCHEDULE.

THE LAW OF DISTRESS AMENDMENT ACT, 1888, and the RULES made thereunder.

	£	s.	d.
Fees to be taken in the following matters			
For every application for a general certificate	0	5	0
For every application for a special certificate	0	2	6
For approving of security by bond	0	10	6
For receiving deposit in lieu of bond	0	4	0
For taxation, where required, if the rent exceeds £20	0	10	0
For taxation, where required, if the rent does not exceed £20	0	5	0

LAW OF DISTRESS AMENDMENT ACT, 1895.

(58 and 59 Vict., c. 24.)

1. A certificate granted to a bailiff by the judge of a county court under the Law of Distress Amendment Act, 1888, may at any time be cancelled or declared void by a judge of that county court, and so much of section seven of that Act as refers to the cancellation of certificates is hereby repealed.

2. If any person not holding a certificate for the time

being in force under the Law of Distress Amendment Act, 1888, levies a distress contrary to the provisions of that Act, he shall, without prejudice to any civil liability, be liable on summary conviction to a fine not exceeding ten pounds.

3. The power to make rules under the Law of Distress Amendment Act, 1888, shall extend to making provision for fixing the duration of certificates granted, or to be hereinafter granted, to bailiffs.

4. A court of summary jurisdiction, on complaint that goods or chattels exempt under section four of the Law of Distress Amendment Act, 1888, from distress for rent, have been taken under such distress, may, by summary order, direct that goods and chattels so taken, if not sold, be restored; or if they have been sold, that such sum as the court may determine to be the value thereof shall be paid to the complainant by the person who levied the distress or directed it to be levied.

5. In any proceeding against any person for an offence under this Act such person shall be competent, but not compellable, to give evidence, and the wife of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent, but not compellable, to give evidence.

6. This Act may be cited as the Law of Distress Amendment Act, 1895.

RULES MADE PURSUANT TO SECTION THREE OF THE LAW OF DISTRESS AMENDMENT ACT, 1895.

1. An applicant for a general certificate shall satisfy the judge that he is resident or has his principal place of business in the district of the Court, and shall state whether he has ever been refused a certificate or had a former certificate cancelled.

2. A general certificate shall (unless previously determined) have effect until the 1st of February next after the expiration of twelve months from the granting thereof, provided that the judge of the Court where the certificate was granted may renew the same from time to time for the like period. This Rule shall apply to every certificate granted before the passing of these

Rules as if it had been granted at the date of the commencement of the Act.

3. A certificate shall have effect, notwithstanding cancellation or expiration by non-renewal, for the purpose of any distress where the bailiff has entered into possession before the date of cancellation or expiration.

4. On the renewal of a certificate the registrar shall be satisfied that the security required under Rules 9 and 10 of the Distress Rules, 1888, is subsisting. The fee on the application for renewal shall be two shillings and sixpence.

5. A renewed certificate shall be under the hand of the judge in the Form No. 1 in the Distress Rules, 1888, except that instead of the word "hereby" the words "by this renewed certificate" shall be inserted, and that the date at which the renewed certificate shall become terminable shall be added at the foot thereof.

6. There shall be made and signed by the registrar on the 1st of February in every year, and exhibited in the office of every Court a list of bailiffs holding certificates for the time being; and the fact of the subsequent cancellation of any such certificate shall be notified by the registrar on such list and published by him in some local newspaper.

7. Wherever "cancel" occurs in the Distress Rules, 1888, add "or make void."

8. The following form of cancellation shall be used:

FORM 3.—CANCELLATION OF CERTIFICATE.

In the County Court of _____, holden at _____ [Date.]

In pursuance of Section 1 of the Law of Distress Amendment Act, 1895, I hereby cancel and make void the certificate granted to A.B., of _____, to act as bailiff to levy distress for rent in England and Wales, or (terms of special certificate) save and except as to any distress whereon the said A.B. has distrained and is in possession of the goods].

(Signed)

Judge.

Dated the 29th of November, 1895.

(Signed) HALSBURY, C.

**MARKET GARDENERS' COMPENSATION ACT,
1895.**

(58 and 59 Vict., Ch. 27.)

[6th July, 1895].

1.—This Act may be cited as the Market Gardeners' Compensation Act, 1895, and shall be read and construed as part of the Agricultural Holdings (England) Act, 1883, hereinafter called the principal Act, as amended by the Tenants Compensation Act, 1890.

2.—This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-six, which date is hereinafter referred to as the commencement of this Act.

3.—Where after the commencement of this Act it is agreed in writing that a holding shall be let or treated as a market garden, the following provisions shall have effect:

(1). The provisions of section thirty-four of the principal Act shall extend to every fixture or building affixed or erected by the tenant to or upon such holding for the purpose of his trade or business of a market gardener.

(2). The improvements numbered (1) "erection or enlargement of buildings," (6) "making of gardens," and (11) "planting of orchards or fruit bushes," in Part I. of the First Schedule to the principal Act shall, as far as regards such holding, cease to be comprised in the said schedule.

(3). The following improvements shall as far as regards such holding be deemed to be comprised in Part III. of the said schedule.

(i.) Planting of standard or other fruit trees permanently set out;

(ii.) Planting of fruit bushes permanently set out;

(iii.) Planting of strawberry plants;

(iv.) Planting of asparagus and other vegetable crops;

(v.) Erection or enlargement of buildings for the purposes of the trade or business of a market gardener.

(4). Section fifty-six of the principal Act shall be read and construed as if the words "with the consent in writing of his landlord" were not included therein.

(5). It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out; but if the tenant shall not remove such fruit trees and fruit bushes before the termination of his tenancy, such fruit trees and fruit bushes shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

4.—Where, under a contract of tenancy current at the commencement of this Act, a holding is at that date in use or cultivation as a market garden with a knowledge of the landlord, and the tenant thereof has then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any of the improvements in respect of which a right of compensation or removal is given to a tenant by this Act, then the provisions of this Act shall apply in respect of such holding, as if it had been agreed in writing after the commencement of this Act that the holding should be let or treated as a market garden.

5.—Any compensation payable under this Act shall as regards land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown or in right of the Duchy of Lancaster, and as regards land belonging to the Duchy of Cornwall, be paid in the same manner and out of the same funds respectively as if it were payable in respect of an improvement mentioned in the first part of the First Schedule to the principal Act, except that as regards land belonging to Her Majesty the Queen, her heirs and successors, in the right of the Crown, compensation for planting strawberry plants and asparagus and other vegetable crops shall be paid in the same manner and out of the same funds as if it were payable in respect of an improvement mentioned in the third part of the said schedule.

6.—For the purposes of the principal Act and of this Act the expression “market garden” shall mean a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of market gardening.

APPENDIX II.

FORMS.

I.

LEASE OF A HOUSE FOR A TERM EXCEEDING THREE YEARS.

This Indenture, made the day of
19 , between A of (hereinafter called
the lessor) of the one part, and B of (hereinafter called the lessee) of the other part Witnesseth that in consideration of the rent hereby reserved, and the covenants hereinafter contained, and on the lessee's part to be respectively paid and performed the lessor hereby demises unto the lessee All [here follows the description of the property] except [here insert any reservation such as right of watercourse from adjoining property]. To hold the said premises, except as aforesaid, unto the lessee for the term of years, from the day of , 19 Yielding and paying therefor during the said term the yearly rent of £ by four equal quarterly payments on the day of , the day of , the day of , the day of , in every year of the said term, clear of all deductions (except landlord's property tax) the first of such quarterly payments to be made on the day of 19 . And the lessee hereby covenants with the lessor that he will during the said term pay the said yearly rent of £ , hereinbefore reserved on the days and in manner hereinbefore mentioned, and will also pay all rates, taxes, assessments and impositions whatsoever which now or during the term may be assessed, charged or imposed upon the said premises or the owner or occupier in respect thereof (land tax and landlord's property tax excepted). And also will during the said term repair and keep the said premises with all fixtures and additions thereto, and all walls, fences, drains and appurtenances in substantial [or good tenantable] repair (reasonable wear and tear excepted) and will once in every three years of the said term and also in the last year thereof paint all the outside wood, iron and other work of the said premises with coats of good oil colours in a proper and workmanlike manner.

And also will once in every seven years of the said term and also in the last year thereof paint all the inside wood, iron and other work usually painted of the said premises with coats of good oil colours in a proper and workmanlike manner. And will also repaper in the usual manner all parts of the said premises now papered, and wash, stop, whiten or colour such parts of the said premises as are now plastered. And also will forthwith insure and at all times during the said term keep insured against loss or damage by fire the said premises in the sum of £ at least in the

Insurance office, or some other insurance office to be approved by the lessor. And will whenever required produce to the lessor or his agent the policy of every such insurance and the receipt for the last premium paid for such insurance. And that in the event of the said premises being wholly or partly burnt or damaged by fire during the said term all moneys received in respect of the said insurance shall be as soon as conveniently may be laid out in rebuilding or repairing the said premises or such parts thereof as shall be burnt or damaged by fire as aforesaid, under the direction and subject to the approval of the surveyor for the time being of the lessor, and that in case of any deficiency in the moneys received in respect of the said insurance, he will make good such deficiency out of his own money. And also will permit the lessor and his agents at all reasonable times during the said term to enter the said premises to examine the state of repair and condition thereof and to take an inventory of the fixtures and effects thereon to be delivered up at the end of the tenancy, and will repair and make good all defects of which notice in writing shall be given by the lessor to the lessee within three calendar months after the giving of such notice. And also will not use or suffer to be used the said premises or any part thereof for the purpose of any trade or business or otherwise than as a private dwelling house without the written consent of the lessor. Nor without such consent alter the plan, elevation or external construction of the same. And also will not during the said term assign, underlet or part with possession of all or any part of the said premises without such consent as aforesaid, which shall not be withheld in case of a respectable and responsible person being proposed as assignee or under lessee. And also will at the expiration or other sooner determination of the said term yield up

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

B. (LS)

AGREEMENT TO LET A HOUSE FOR THREE YEARS.*

This Agreement made the _____ day of _____ one
thousand nine hundred and _____ Between
_____ of _____ (hereinafter
called the Landlord) of the one part, and
_____ of _____ (hereinafter called the
Tenant) of the other part, Witnesseth that the Landlord
lets [or agrees to let] and the Tenant takes [or agrees to

* In this and the two following agreements there is implied a covenant on the part of the landlord for quiet enjoyment by the tenant of the premises demised, the meaning and effect of which covenant is explained, *ante*, p. 117.

take] all that messuage or tenement, with the appurtenances, being

in the Parish of

in the County of

with the Landlord's fixtures and fittings set forth in the Schedule hereunder written, to hold for the term of three years certain, to commence from the day of

One thousand nine hundred and

at the yearly rental of

payable quarterly

on the usual quarter days free from any deduction in respect of land tax, sewers rate, or any other taxes, rates or impositions now or hereafter made or imposed, landlord's property tax alone excepted. And the tenant agrees to pay the rent reserved on the said days, and also the said taxes, rates and impositions for the said premises, to keep, use and occupy the said house as a private dwelling-house only, and not to permit the same to be used for the purpose of carrying on any trade or business therein without the landlord's consent in writing, not to hold or permit to be held upon the said premises any sale by auction, and not to assign, underlet, or part with possession of the said premises without the like consent, and to keep the said premises [except the roof and outer walls] in good repair (reasonable wear and damage by fire excepted) during the said term, and all drains well cleaned [and once in every year at least to whitewash such parts of the said premises as have hitherto been whitewashed] and to permit the landlord, with or without workmen, during the said term, at convenient times of the day, to enter upon the said premises in order to examine the state and condition thereof. The tenant agrees on the expiration or determination of the tenancy hereby created to quietly deliver the said premises to the landlord in such good repair as aforesaid (except as aforesaid), together with the fixtures herein mentioned. Provided always and it is hereby agreed and declared that on non-payment of the said rent within days after the same shall become due, or on non-performance of any of the agreements on the tenant's part herein contained, it shall be lawful for the landlord or his representatives or successors in title to re-enter on the said premises, and thereupon the tenancy hereby created shall be at an end.

As witness the hands of the said parties.

THE SCHEDULE ABOVE REFERRED TO.

AGREEMENT TO LET A HOUSE FOR ONE YEAR.

And the tenant agrees to pay the rent reserved on the said days, and also the said taxes, rates and impositions for the said premises, to keep use and occupy the said house as a private dwelling house only, and not to permit the same to be used for the purpose of carrying on any trade or business therein without the landlord's consent in writing, not to hold or permit to be held upon the said premises any sale by auction, or to underlet the said premises without the like consent, and to permit the landlord, with or without workmen, during the said term at convenient times of the day, to enter upon the said premises in order to examine the state and condition thereof. The tenant agrees on the expiration or determination of the tenancy hereby created to quietly deliver the said premises to the landlord in as good repair and condition as the same now are in (reasonable wear and damage by fire excepted), together with the fixtures herein mentioned.

Provided always and it is hereby agreed and declared that on non-payment of the said rent within days next after the same shall become due, or on non-performance of any of the agreements on the tenant's part herein contained, it shall be lawful for the landlord or his representatives or successors in title to re-enter on

the said premises, and thereupon the tenancy hereby created shall be at an end.

As witness the hands of the said parties.

THE SCHEDULE ABOVE REFERRED TO.

IV.

AGREEMENT TO LET A FURNISHED HOUSE.

This Agreement made the day of one thousand nine hundred Between (hereinafter called the landlord) of the one part, and (hereinafter called the tenant), of the other part,

Witnesseth that the landlord agrees to let and the tenant agrees to rent, All that messuage or tenement, with its appurtenances, situate and being together with the furniture, fixtures, and effects therein, as are or will be described in an inventory thereof for a term to commence on the day of and to terminate on the day of and that the rent shall be without any deduction whatever. And the tenant hereby agrees to pay the said rent of to the landlord or his agents at the following periods, viz. :—

And the landlord further agrees to pay the original rent, and to pay all rates and taxes (except gas rate) chargeable upon the said premises, and to keep the said messuage or tenement with its appurtenances, in good substantial repair (repairs rendered necessary by the negligence or improper acts of the tenant, his family, visitors, servants, or others excepted) during the said term. And the tenant further agrees to deliver up at the expiration or other determination of the said term, full and entire possession of the said house and premises, furniture and effects as per inventory aforesaid, unto the landlord or his agents in as good state and condition as the same now are (reasonable use and wear and tear thereof and damage by accidental fire only excepted). And the tenant hereby agrees to make good, repair or restore, or (at the option of the landlord) to pay for all such of the articles of furniture, fixtures and effects as shall or may be broken, lost, damaged or destroyed by

his family, servants or others, during the said term (except as aforesaid). And the tenant also agrees not to remove any of the articles of furniture, fixtures and effects from the said premises, and to leave the same at the termination of the said term in the several rooms and places as described in the said inventory, and not to assign, sublet or part with possession of the said house and premises without the consent in writing of the landlord, nor to use the said house and premises for any other purpose than that of a private residence. And lastly, in case of non-payment of the said rent within days after the same shall become due, or upon non-fulfilment or breach of any of the clauses herein contained, and to be observed by the tenant, then and in every such case the landlord or his agents shall be at liberty to re-enter and take possession of the said house and premises, together with the said furniture and effects, with power to recover all rent then in arrear and any further rent which may accrue under this agreement. The landlord and the tenant each to pay a moiety of the cost of this agreement, the counterpart thereof and stamps.

As witness the hands of the said parties the day and year first above written.

(Signed)

(Signed)

V.

NOTICE TO QUIT BY LANDLORD OR HIS AGENT TO
TENANT.

I hereby [as agent for and on behalf of]
give you notice to quit and deliver up on , the
 day of next, possession of [*describe*
premises] which you now hold of ["me," or if the notice
is by the agent, "the said "], situate at ,
in the parish of , in the county of .

A. B. [*landlord or his agent*].

Dated this day of , in the year
of our Lord One Thousand

Witness

To Mr.

[*tenant*].

VI.

NOTICE TO QUIT BY TENANT TO LANDLORD OR HIS AGENT.*

I hereby give you [*or, where notice given to agent, add*
 “as agent for and on behalf of (landlord)]
 notice that I shall on the day of next
 deliver up possession of the [*describe premises*] which I
 now occupy as tenant under you [*or, the said (landlord)*].

Dated this day of , in the year of
 our Lord one thousand nine hundred .

Witness

To Mr. [*landlord or his agent*].

VII.

NOTICE TO QUIT BY LANDLORD TO TENANT (UNDER AGRICULTURAL HOLDINGS ACT, 1883).

I hereby give you notice to give up, on the
 day of next, possession of and
 hereditaments which you now hold of , situate
 at , in the parish of , in the
 county of .

(A. B.) [*landlord*].

Dated this day of , in the year of
 our Lord one thousand nine hundred .

Witness

To Mr. .

VIII.

NOTICE BY TENANT TO LANDLORD OF INTENTION TO CLAIM COMPENSATION UNDER THE AGRICULTURAL HOLDINGS ACT, 1883.‡

To [*insert name of landlord*].

SIR,

I hereby give you notice, that in pursuance of the Agricultural Holdings' Act, 1883, I [*insert name of tenant*] intend on the determination of the tenancy of this holding to claim compensation in respect of the

* See as to giving notice to agent of landlord, ante, p. 516.

† This must be at least a year's notice, expiring with a current year of the tenancy, unless a shorter notice has been expressly stipulated for. (See ante, p. 512). This rule applies whether the notice be given by or to the landlord.

‡ To be given at least two months before end of tenancy. (See ante, p. 571).

unexhausted value of the following improvements executed by me upon the farm I occupy under you, called _____, in the parish of _____, in the county of _____, up to the present date as per annexed particulars.

SCHEDULE.

	£	s.	d.
1. For linseed cake, cotton cake, rape cake, linseed or cotton seed meals and malt dust, consumed on the holding by cattle, sheep, and pigs, during the last year of the tenancy			
2. For similar cakes, etc., consumed during the previous year			
3. For feeding stuffs, other than the above, consumed during the last year of the tenancy			
4. For the same consumed during the previous year			
5. For manures used on the farm for green crops consumed by stock on the farm during the last year of the tenancy...			
6. For manure applied to permanent pasture land			
7.			
8.			
9.			
10.			
	£		

I also give you notice, that if any other cakes or feeding stuffs not included in the foregoing schedule are consumed upon the said farm before the expiration of the tenancy, I shall claim compensation for the same, and also for any other improvements upon the said farm.

Signed,

[tenant].

Dated

IX.

NOTICE OF COUNTERCLAIM BY LANDLORD UNDER
AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.*

To [insert tenant's name].

SIR,

With reference to your notice of informing me that you intend, on quitting your tenancy, to claim certain compensations therein specified, I hereby give you notice that I intend to make the following counter-claim against you:—

Yours faithfully,

[landlord].

Dated the day of 19

X.

DECLARATION TO BE SERVED (PURSUANT TO LODGERS' GOODS PROTECTION ACT, 1871) ON A SUPERIOR LANDLORD OR HIS BAILIFF BY A LODGER WHOSE GOODS HAVE BEEN, OR ARE THREATENED TO BE DESTROYED OR DAMAGED BY FIRE OR BY OTHER TRAINED UPON.

19

SIR,

I [insert lodger's name] hereby declare that Mr. _____, the tenant of this house, has no right of property nor beneficial interest in the furniture, goods and chattels, a list of which is hereunto appended, which are now in and upon the said premises, and which you have distrained upon (or threatened to distrain upon) for rent due to you from the said Mr. _____; and I hereby declare that the said furniture, goods and chattels are the property [or in the lawful possession] of myself as and being a lodger in the said house.

I further declare, that the sum of _____ and no more is due from me to the said Mr. _____, as rent of the lodgings which I occupy in the said house; which said sum, or so much thereof as is requisite to satisfy your distress, I am willing to pay over to you.

[Or as the case may be:—I further declare that no rent is due from me to Mr. _____ on account of the rent of the lodgings I occupy in this house].

And I declare that the list of articles hereto annexed

*To be served on tenant before end of tenancy or within 14 days thereafter.

is a correct inventory of the furniture, goods and chattels referred to in the above notice or declaration.

(A. B.) [lodger].

THE INVENTORY.

(A. B.) [lodger].

XI

NOTICE BY LANDLORD TO TENANT UNDER SECTION 14 OF THE CONVEYANCING ACT, 1881.

To [tenant].

I hereby give you notice that you have committed breaches of the covenants as to repairs contained in the lease dated _____, under which you hold the premises _____, which said breaches are specified in the schedule hereto annexed; and I hereby require you within* _____ from this date to remedy the said breaches and to pay me £ _____, as compensation for the same.

(Signed),

[landlord].

STAMP DUTIES ON APPRAISEMENT

Of any property, or of any interest therein, or of the annual value thereof, or of any dilapidations, or of any repairs wanted, or of the materials and labour used or to be used in any building, or of any artificers' work whatsoever—

		s.	d.
Where the amount of the appraisalment or valuation does not exceed	£5	0	3
Exceeds	£5 and does not exceed £10	0	6
..	10 ..	1	0
..	20 ..	1	6
..	30 ..	2	0
..	40 ..	2	6
..	50 ..	5	0
..	100 ..	10	0
..	200 ..	15	0
..	500 ..	20	0

* Three months is generally considered a reasonable time within the meaning of s. 14 of the Conveyancing Act, 1881 (see as to the notice, ante, pp. 502-3).

EXEMPTIONS.

(1.)—Appraisement or valuation made for, and for the information of, one party only, and not being in any manner obligatory as between parties either by agreement or operation of law.

(2.)—Appraisement or valuation made in pursuance of the order of any Court of Admiralty or Vice-Admiralty, or of any Court of Appeal, from a judgment of any Court of Admiralty.

(3.)—Appraisement or valuation of property of a deceased person made for the information of an executor or other person required to deliver in England or Ireland an affidavit or to record in any commissary Court in Scotland an inventory of the estate of such deceased person.

(4.)—Appraisement or valuation of any property made for the purpose of ascertaining the death duty payable in respect thereof.

Every appraiser shall, within 14 days after the making of an appraisement or valuation chargeable with duty, write out the same in words and figures, showing the full amount thereof upon duly stamped material, under the penalty of £50. And any person who receives from an appraiser, or pays for the making of any appraisement or valuation, unless written out and stamped as aforesaid, shall forfeit £20 (see Stamp Act, 1891, s. 24).

INDEX.

A.

ABANDONMENT OF POSSESSION (See "Distress")

ADMINISTRATOR,

lease by, 33-37

AGENT,

lease by, 37-38

lease to, 61-62

execution of lease by, 257

representations by, 419 (note)

AGREEMENT FOR LEASE,

writing necessary for, 10

effect of, before Judicature Acts, 11-12

since Judicature Acts, 12, 13-16

form and effect of, 274-275

specific performance of, principles on which granted,
275-276

requisites of agreement, 276-277

agreement subject to formal contract, 277

void agreement, effect of part performance, 277-278

specific performance discretionary, 278-279

defences to action for specific performance of,
279-284

execution of lease pursuant to decree for specific per-
formance, 285-286

agreement for lease to contain "usual covenants,"
286-287

damages for breach of, 287-288

AGREEMENT FOR LETTING,

form of, 20

AGRICULTURAL COVENANTS, 221-229

not *waste* to leave land uncultivated, 221 (note)

express covenant supersedes implied covenant as to
cultivation, 221

but may be consistent with local custom, 221

custom of country, 222

construction of special covenants as to cultivation,
223-224

covenant not to remove hay, etc., 224-226

effect of execution against tenant, 227-228

on whom binding, 226-227

AGRICULTURAL COVENANTS (continued).

remedy for breach of agricultural covenants, 228-229

AGRICULTURAL HOLDINGS,

distress on, 359

compensation to tenants of (See "Compensation for Agricultural Improvements")

AGRICULTURAL LEASES,

implied covenants by lessee in, 128-129

AGRICULTURAL RATES ACT, 1896

partial exemption from rates in certain cases, 178

ALIEN,

lease to, 64

ALLOTMENTS,

compensation to tenants of (See "Compensation for Agricultural Improvements")

ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887,

(See "Compensation for Agricultural Improvements")

APPORTIONMENT OF RENT, 102-105

APPRAISEMENT (See "Distress")

ASSESSED TAXES,

tenant's liability for, 172

ASSIGNMENT,

covenant against, 213-221

interpretation of, 214-215

license to assign or sublet, 216-218

fine for giving license, 218

measure of damages for breach of, 219

no relief against forfeiture for breach of, 219-220

effect of verbal license to assign, 220

what consent required in case of agreement for sub-lease, 220

covenant not a "usual" one, 221

covenant runs with land, 220

ASSIGNMENT OF LEASE,

by act of parties, 443-450

difference between and underlease, 443-444

must be by deed, 444

effect of underlease for residue of term, 444-445

assignment must be of legal estate, 445-446

possession not necessary to complete assignment, 446

assignee must indemnify lessee, 447

and assignor, 447-448

difference between obligation of lessee and assignee, 448-449

liability of assignee to lessor, 449

extent of, 449-450

rights of assignee against lessor, 450

ASSIGNMENT OF LEASE (continued).

by operation of law, 451

by death of tenant, 452

difference between position of executor and administrator, 452-453

liabilities of executors and administrators, 453-454

discharge of executor by assignment, 454-455

by bankruptcy of tenant, 456

disclaimer of lease by trustee, 458-463

leave of court when necessary, 459-461

time for making, 461-462

effect of disclaimer, 462-463

vesting order in respect of disclaimed property, 463-465

proof by person injured by disclaimer, 465-466

position of liquidator of company, 466

by taking in execution, 468

effect of, on claim for rent, 146

ASSIGNMENT OF REVERSION,

by act of parties, 435-443

effect of, 435-437

what covenants run with reversion, 437-440

negative covenants binding with notice, 440-441

apportionment of covenants and conditions on severance of reversion, 441-442

when assignee's title complete, 442

payment of rent before notice of, 442-443

by operation of law, 451

by death of reversioner, 451-452

by bankruptcy of reversioner, 456

by taking in execution, 467-468

effect of, on claim for rent, 146-147

ATTESTATION OF LEASE,

when necessary, 258

ATTORNEY.

execution of lease by, 257

ATTORNMEN CLAUSE, 307-310

as bill of sale, 307-308

when valid, 308-310

B.

BAILIFF,

lease by, 38

certificated must be, to levy distress, 368-369

BANKRUPTCY,

proviso for re-entry in case of, 252-254, 488-489

assignment of reversion by, 456

assignment of lease by, 456 et seq.

"BEST RENT,"

what is, 97-98

BOROUGH RATES,

tenant's liability for, 172

when owner liable for, 172-173

BOUNDARIES,

obligation of tenant to preserve, 398

encroachments presumed to be for landlord's benefit,
399

BUILDING,

covenants as to, 246-249

not "usual" covenants, 246

when they run with land, 246

construction of, 246-247

as to keeping building line, 247-248

building agreement separable, 248

building covenant when discharged, 248

remedies for breach of, 248-249

measure of damages for breach of, 249

BUILDING ACT, 1774.

provisions of, as to application of insurance moneys,
209-211

C.**CHARITABLE CORPORATION,**

lease by, 46-48

COLLATERAL REPRESENTATIONS,

landlord's liability on, 418 (note)

by agent of landlord, 419 (note)

COMMENCEMENT OF LEASE (See "Term of Lease")**COMMISSIVE WASTE (See "Waste")****COMPENSATION,**

as condition of relief against forfeiture (see "Forfeiture")

COMPENSATION FOR AGRICULTURAL IMPROVEMENTS,

tenant's right to, 561-580

improvements for which compensation may be
claimed under A. H. Act, 561

basis of compensation, 562-563

holdings to which A. H. Act, 1883, applies, 563

mode of estimating compensation, 563-564

contracting out of Act, 564, 573

limit to tenant's right to compensation, 564-565

list of improvements for which compensation may
be had, 565-567

consent of landlord to improvements, 567

improvements made before January 1, 1884,
567-568

COMPENSATION FOR AGRICULTURAL IMPROVEMENTS—Tenant's right to (continued).

- notice to landlord as to improvements in Part II. of Sched. I., 568-569
- compensation in lieu of that given by Act, 569-570
- notice to landlord of intention to claim compensation, 571-572
- payment of compensation by incoming tenant, 572
- charge on holding to secure amount paid for compensation, 572-573
- recovery of compensation where landlord a trustee, 573
- extension of A. H. Act (1883), 574-580
 - Tenants' Compensation Act (1891), 574-576
 - Market Gardeners' Compensation Act (1895), 576-578
 - Allotments and Cottage Gardens Compensation for Crops Act (1887), 578-580
 - compensation for tenants of allotments and small holdings, 580

CONDITION,

- difference between and covenant, 106-107

CONDITION OF PREMISES,

- implied covenant as to, by lessor, 119

COPYHOLDER,

- lease by, 50-51

CORPORATIONS,

- leases by, 39-48
- leases to, 38-60

COSTS

- of lease and counterpart, 260
 - how to be borne, 260-261
 - scale of charges, 261-267
- agreement between solicitor and client as to, 268

COSTS OF DISTRESS (See "Distress")

COUNTY COUNCIL,

- lease by, 54

COUNTY RATES,

- tenant's liability for, 172

COVENANTOR,

- liability of continues notwithstanding assignment of lease, 112-113

COVENANTS IN LEASES,

- meaning of covenant, 105
- difference between covenant and condition, 106-107
- interpretation of, 107

COVENANTS IN LEASES (continued).

dependent and independent, 107-110

joint and several, 110-112

void, 113-114

positive and negative, 114-115

implied, 115-129

by lessor, 115-126

by lessee, 126-129

express, 129-249

by lessor, 129-139

by lessee, 139-249

what run with land and reversion, 437-440

negative, binding on persons taking with notice,
440-441

CRIMINAL LAW,

provisions of relating to landlord and tenant, 581-584

penalty for letting infected house, etc., 581

penalty for ceasing to occupy infected house
without disinfection, 582

house of ill-fame, 582

theft by tenant or lodger, 583

malicious injury by tenants, 583

forcible entry, 583-584

forcible detainer, 584

CROWN, THE

leases by, 39

CUSTOM OF COUNTRY,

may be consistent with express covenant as to cultivation, 221

D.

DAMAGES

for breach of lessee's repairing covenant, 196-203

in case of sub-lease, 199-202

DATE

of lease, 21-22

DEATH,

assignment of reversion by, 451-452

of lease by, 452-455

DELIVERY (See "Execution of Lease")

DEMISE,

words of, 64-65

DENIZEN,

lease to, 64

DESERTED PREMISES,

proceedings before justices to recover possession of,
537

DESTRUCTION OF PREMISES,

effect of, on claim for rent, 150-151

DETERMINATION OF TENANCY,

- by effluxion of time, 473
 - merger, 473-474
 - surrender, 474-480
 - express power to determine, 480-482
 - disclaimer, 482-483
 - forfeiture, 483-496
 - notice to quit (See " Notice to Quit ")

DISCLAIMER,

- determination of tenancy by, 482-483
- by trustee in bankruptcy, 458

DISTRESS FOR RENT,

- what it is, 322
- must generally be on demised premises, 322-323
- could not formerly be sold, 323
- what rent may be distrained for, 324-325
- who may distrain, 325-334
- (1) reversioners, 325-333
 - sub-lessors, 326
 - yearly tenants, 326-327
 - tenants in tail, 327
 - tenants by curtesy and in dower, 327
 - tenants under execution, 327
 - mortgagees, 327-329
 - mortgagors, 329-330
 - guardians of infants, 330
 - joint tenants and tenants in common, 330-331
 - co-heiresses, 331
 - executors and administrators, 331-332
 - trustees, 332-333
 - corporations, 333
- (2) persons not having reversion, 333-334
 - receivers, 333-334
 - agents, 334
 - sequestrators of ecclesiastical benefices, 334
 - lords of manors, 334
- what may be distrained, 335-336
 - corn and growing crops, 335-336
- things privileged from distress, 337-352
- (1) things absolutely privileged, 337-348
 - animals *feræ naturæ*, 337
 - fixtures, 337-338
 - goods delivered in the way of trade, 338-340
 - things in actual use, 341
 - clothes, bedding and tools to value of £5, 341
 - lodgers' goods, 341-344
 - railway rolling stock, 344-345

DISTRESS FOR RENT—Things privileged from distress (continued).

- hired machinery and breeding stock on agricultural holdings, 345-346
- goods in custody of the law, 346-347
- other things absolutely privileged, 347-348
- (2) things conditionally privileged, 348-352
 - beasts of plough, etc., 348-350
 - tools, etc., of trade or business, 350-351
 - agisted stock on agricultural holdings, 351-352
- when a distress may be made, 352-356
 - how right may be taken away, 352-353
 - tender of rent, 353-355
 - distress after end of tenancy, 355-356
 - injunction against threatened distress, 356
- limitations on right of distress, 356-359
 - in case of bankruptcy of tenant, 356-357
 - tenant company in liquidation, 357-359
 - agricultural holdings, 359
- proceedings in distress, 359-383
 - at what time distress may be made, 359-362
 - no distress until rent in arrear, 360
 - duties after end of tenancy, 360-362
 - amount of rent recoverable by distress, 362-363
 - in case of agricultural holdings, 362-363
- place where distress is to be made, 363-367
 - when may be off premises, 364
 - fraudulent removal of goods, 364-367
- the way in which distress is to be levied, 367-377
 - bailiffs to be certificated, 368-369
 - liability of landlord for illegal or irregular distress, 369-370
 - distress warrant, 370
 - entry on premises to make distress, 370
 - forcible entry and re-entry, 371-372
 - abandonment of possession, 372
 - walking possession, 372-373
 - impounding distress, 373-377
 - rule as to impounding cattle, 374-376
 - impounding on premises, 376-377
 - what amounts to, 376-377
 - use of impounded goods by distrainor, 377
- notice of distress and time for sale, 377-379
- appraisement, 379-380
- mode of sale, 380-381
 - as to surplus, 381
- deficiency on sale : second distress, 381-382
- costs of distress, 382-383

DISTRESS FOR RENT (continued).

rescue and pound breach, 383-385

landlord's remedy where tenant's goods taken in execution, 385-389

in High Court, 385-387

position of sheriff, 386-387

limit to landlord's claim in case of small tenancies, 387

in County Court, 388-389

in Admiralty Court, 389

charge on proceeds of distress in case of bankruptcy, etc., of tenant, 390

wrongful distress, remedies of tenant, 391-397

action for damages, 391-392

double value, 392

injunction, 392

summary proceedings, 392-394

under Agricultural Holdings Act, 392-393

summary procedure in Metropolis, 393-394

replevin, 394-397

procedure in, 395-397

DISTRESS DAMAGE FEASANT, 385

DISTRESS WARRANT, 370

DISTRICT COUNCIL,

lease by, 54

DOTARDS (see "Trees")

DOUBLE RENT,

liability for, of tenant holding over, 539

DOUBLE VALUE,

liability for, of tenant holding over, 538-539

DRUNKARD,

lease by, 57

DURATION OF LEASE (See "Term of Lease")

DURESS,

lease by person under, 57-58

E.

EASEMENTS,

grant of, 70

implied grant of, by lease, when, 70-76

reservation of, in favour of lessor, 77-78

ECCLIASTICAL CORPORATIONS,

leases by, 39-42

EFFLUXION OF TIME,

determination of tenancy by, 473

EJECTMENT (See "Recovery of Possession of Demised Premises")

- ELEEMOSYNARY CORPORATION,
 lease by (See "Charitable Corporation")
- EMBLEMENTS,
 tenant's right to, 540-541
- EQUITABLE WASTE (See "Waste")
- ESCROW,
 delivery of lease as an, 257
- ESTOPPEL,
 lease by, 23
- EXCEPTION,
 difference between, and reservation, 81
 must not be repugnant to lease, 81
 of trees and minerals, 82-83
- EXCESSIVE DISTRESS (See "Wrongful Distress")
- EXECUTION OF LEASE,
 what is, 255
 delivery of lease as an escrow, 257
 by agent or attorney, 257
- EXECUTOR (See "Death")
 lease by, 33-37
- EXEMPTION FROM DISTRESS (See "Distress")
- EXPRESS COVENANTS BY LESSOR,
 for quiet enjoyment, 129-134
 to renew lease, 134-136
 option to lessee to purchase reversion, 138-139
 to repair, 195-196
- EXPRESS COVENANTS BY LESSEE,
 to pay rent, 139-151
 to pay rates, taxes, etc., 151-178
 to repair, 178-205
 to insure, 205-213
 not to assign, etc., 213-221
 for working the demised property, 221-232
 as to trading, etc., on demised premises, 232-244
 to reside on demised premises, 244
 to deliver up fixtures, etc., 244-246
 as to building, 246-249
- EXTRAORDINARY TITHE RENT-CHARGE,
 who liable for, 167
 not affected by Tithe Act, 1891, 167
 exempt from land tax, 167
- EVICITION,
 plea of, to claim for rent, 143, 148-150

F.

- FENCES,
 obligation of tenant to repair, 399-400
 hedges between adjoining properties, 400-401

FENCES (continued).

- obligations of adjoining occupiers as to, 400
- covenant to keep up hedges and fences, 400, note
- duty to fence in case of yearly tenancy, 401-402
- right of tenant to cut wood for repair of, 400

FIRE,

- tenant's obligation to repair in case of, 193-194

FISHING RIGHTS

- pass by lease, 418
- lease of, must be by deed, 418
- effect of parol letting, 418

FIXTURES,

- covenant to deliver up, 244-246
 - remedy for breach of, 245-246
- covenant to yield up in repair, 193
- rights of landlord and tenant with regard to, 541-561
- definition of, 541
- mode and degree of annexation to soil, 541-542
- object of annexation, 542-543
- constructive annexation, 543-544
- removable fixtures, 544-553
 - trade fixtures, 544-546
 - agricultural fixtures, 546-551
 - on land in mortgage, 550
 - on market gardens, 550-551
 - on allotments and small holdings, 551
 - fixtures for trade and other purposes combined, 551
 - fixtures for ornament and convenience, 552-553
 - time for removing fixtures, 553-556
- contracts relating to, 556-557
- right to, where lease mortgaged, 557
- taken with lease, right to remove, 557-558
- right to, on bankruptcy of tenant, 558
- remedies for wrongful removal of, 558-560
 - measure of damages, 559-560
- seizure of, under execution, 561
- criminal offences as to, 561

FORCIBLE DETAINER, 584**FORCIBLE ENTRY (and see "Distress"), 583-584****FORFEITURE,**

- determination of tenancy by, 483-496
 - on breach of condition subsequent, 484
 - under proviso for re-entry on breach of covenant, etc., 484
 - non-payment of rent, 485-487
 - breach of tenant's covenants, 487-488
 - on bankruptcy, etc., 488-489

FORFEITURE (continued).

operation of forfeiture, 490

waiver of forfeiture, 490-496

in case of continuing breach of covenant, 492-494

operation of waiver, 495

waiver by deed, 495-496

lessee to bear cost of express waiver, 496

relief against forfeiture, 496-508

(i) for non-payment of rent, 496-499

where no ejectment action brought, 497-498

whether relief discretionary, 498-499

none under Conveyancing Acts, 499

(ii.) in other cases, 499-508

provisions of Conveyancing Acts, 499-508

notice to lessee, 499-500

meaning of lessee, etc., 501-502

form and sufficiency of notice, 502-503

cases under s. 14 of 1881 Act, 503

relief of under-lessees, 503-504

limitations in relieving enactments,
504-506

compensation as condition of relief,
506-507

construction of s. 2 of 1892 Act, 507-508

relief discretionary with Court, 508

for breach of lessee's repairing covenant, 203-205

where there are general and particular covenants to
repair, 204-205

FOX HUNTING (See "Game")**FRAUDULENT REMOVAL**

of goods to avoid distress, 346-347

FURNISHED HOUSES, ETC.

implied covenant or condition as to state of, 119-123

G.**GAME,**

reservation of, in lease, 79-80

right to, 408-409

covenant to keep up, 409

improper exercise of sporting rights, 409-410

damage to tenant's crops by, 410

tenant's remedy for damage by ground game, 410-411

effect of reservation of shooting rights, 411

fox-hunting, 411-412

effect of reservation of hunting, 412

provisions of Game Act (1831), 412-413

provisions of Ground Game Act (1880), 413-416

cases under Act, 416-417

- GAS RATE,**
tenant liable for unless landlord has agreed to pay, 177
- GENERAL DISTRICT RATE,**
occupier liable for, 173
how assessed, 173-174
when owner liable for, 174
apportionment of, between outgoing and incoming owners and occupiers, 174
- GENERAL RATE IN METROPOLIS,**
assessed, levied and collected as poor rate, 177-178
right of tenant to deduct from rent portion representing sewers rate, 178
- GROUND GAME** (See "Game")
right to, 80-81
- GROUND GAME ACT, 1880** (See "Game ")

H.

- HAY, STRAW, ETC.,**
covenant not to remove, 224-226
effect of execution against tenant, 227-228
on whom binding, 226-227
- HEDGES** (See "Fences")
rights of tenant in, 408
- HIGHWAY RATES,**
tenant's liability for, 173
- HOLDING OVER,**
yearly tenancy created by, when, 291-293
statutory liability of tenant, 538-540
double value under 4 G. II., c. 28, s. 1, 538-539
double rent under 11 G. II., c. 19, s. 18, 539
- HUNTING** (See "Game ")

I.

- ILLEGAL DISTRESS** (See "Wrongful Distress")
- ILLEGALITY,**
plea of, to claim for rent, 146
- IMPLIED COVENANTS BY LESSOR,**
for title, 116-117
for quiet enjoyment, 117-118
that premises are in good condition, 119
in case of furnished houses, etc., 119-123
under Public Health Acts, 123-124
on letting unfurnished houses, etc., to working classes, 124-125
not to derogate from his own grant, 125-126
- IMPLIED COVENANTS BY LESSEE,**
to repair, 127-128

IMPLIED COVENANTS BY LESSEE (continued).

as to waste, 127-128

in leases of agricultural property, 128-129

IMPOUNDING DISTRESS (See "Distress")

IMPROVEMENTS (See "Compensation for Agricultural Improvements")

INFANT,

lease by, 54-55

" to, 62-63

INFECTED HOUSE, ETC.,

penalty for letting, 581

for ceasing to occupy without disinfection, 582

INHABITED HOUSE DUTY,

how assessed, 171

exemptions from, 171

a tenant's tax, as between landlord and tenant,
where no contract to contrary, 172

INJUNCTION

against distress, 356

INTEREST

on rent, 151

INSURANCE,

covenant by lessee to insure, 205-213

form of, 206

is a covenant of indemnity, 206

when tenant can require insurance money to be laid
out in re-building, 209

Building Act, 1774, provisions of, 209-211

breach of covenant to insure, 211-212

measure of damages for breach of covenant to insure
before loss, 212-213

after loss, 213

IRREGULAR DISTRESS (See "Wrongful Distress").

J.

JOINT STOCK COMPANY,

lease by, 43-44

L.

LAND TAX,

prima facie a landlord's tax, 161

but tenant may covenant to pay, 161

is a tenant's tax, qua public, 161

how assessed, 161

deduction of, from rent, 161

when redeemed by landlord, payment of redemption-
money by tenant, 162

LANDLORD'S PROPERTY TAX,

payable in first instance by tenant, 159

LANDLORD'S PROPERTY TAX (continued).

- landlord must allow deduction of, from rent, 159
- covenant by tenant to pay, void, 159
- when landlord primarily assessable, 160

LANDLORD'S TAXES,

- what are, 152
- none as between landlord and public, 158-159

LAY CORPORATION,

- lease by, 43-48

LEASE,

- what is a, 1-3
- duration of, 3-4
- difference between, and license, 4-5
- verbal, when permissible, 7
- deed under seal, when must be by, 7
- writing, when necessary for, 7
- void, effect of entry under, 8-9, 11-12
- formal parts of, 17-21
- model form of, 17-18
- indenture of, 17
- date of, 21-22
- parties to, 22-23
- estoppel, by, 23
- assignment of (See "Assignment of Lease")

LEASE, AGREEMENT FOR (See "Agreement for Lease")**LESSEE,**

- who may be,
 - corporations and public bodies, 58-61
 - trustees, 61
 - agents, 61-62
 - married women, 62
 - infants, 62-63
 - lunatics, etc., 63-64
 - trustees of renewable leaseholds, 64
 - aliens and denizens, 64
- express covenants by (see "Express Covenants by Lessee")
- implied covenants by (see "Implied Covenants by Lessee")

LESSOR,

- who may be, 24-58
 - tenants for life, 24-28
 - tenants for years, 29
 - mortgagors and mortgagees, 29-33
 - executors and administrators, 33-37
 - married woman as executrix, 37
 - agents, 37-38
 - bailiffs, 38

LESSOR--Who may be (continued).

- corporations, 39-48
- trustees of settled estates, 48-49
- tenants-in-tail, 49-50
- copyholders and lords of manors, 50-52
- trustees in bankruptcy, 52
- liquidators, 52-53
- receivers, 53
- district councils, 53
- parish councils, 54
- county councils, 54
- infants, 54-55
- married women, 56
- lunatics, 56-57
- drunkards, 57
- miscellaneous, 58
- express covenants by (see "Express Covenants by Lessor")
- implied covenants by (see "Implied Covenants by Lessor")

LICENSE,

- difference between and lease, 4-5
- bare, 5-6
- coupled with grant of interest, 6
- to assign or sub-let, 216-218

LIGHTING AND WATCHING RATES,

- occupier liable for, unless agreement to contrary, 175

LIQUIDATED DAMAGES,

- reservation of additional rent by way of, 98-102
- difference between and penalty, 98-102

LIQUIDATOR,

- lease by, 52-53

LODGER,

- what constitutes a, 343
- whether a boarder is a, query, 344

LODGER'S GOODS,

- exemption of, from distress, 341-344

LORD OF MANOR,

- lease by, 51-52

LUNATIC,

- lease by, 56-57
- „ to, 63-64

M.

MALICIOUS INJURY

- to building, etc., by tenants, 583

MARKET GARDENERS' COMPENSATION ACT, 1895

- (See "Compensation for Agricultural Improvements")

- MARRIED WOMAN,
 lease by, 56
 " as executrix, 37
 " to, 62
- MASTER AND SERVANT,
 tenancy as between, 311
 not within Agricultural Holdings Act, 311
- MELIORATING WASTE (See "Waste")
- MERGER,
 determination of tenancy by, 473-474
 what prevents merger, 474
- MESNE PROFITS (See "Recovery of Possession of Demised Premises")
- MINES,
 rating of, under Rating Act (1874), 170
- MINES AND MINERALS,
 exception of, in lease, 82-83
- MINING COVENANTS,
 construction of, 229-231
 remedies for breach of, 231-232
- MONTHLY TENANCIES (See "Tenancies for less than a Year")
- MORTGAGEE,
 lease by, 29-33
- MORTGAGOR,
 lease by, 29-33
- MORTGAGOR AND MORTGAGEE,
 tenancy as between, 306-311
- MUNICIPAL CORPORATION,
 lease by, 44-45
- N.
- NOTICE,
 before enforcing forfeiture (see "Forfeiture")
- NOTICE OF DISTRESS (See "Distress")
- NOTICE TO QUIT,
 when required, 509-510
 under Tenants' Compensation Act (1890), 510
 some notice necessary in all periodic tenancies, 510
 by express agreement of the parties, 510-511
 length of notice required, 511-512
 in case of agricultural tenancies, 512
 when notice must expire, 512-514
 by whom to be given, 514-515
 to whom to be given, 515-516
 form of, 516
 must be certain, 516-517
 must extend to all premises, 517
 exception in case of agricultural holdings, 517-518

NOTICE TO QUIT (continued).

- should state time of expiration, 518
- alternative notice may be good, 518
- notice in case of implied yearly tenancy, 519
- need not be in writing, 520
- service of, 520-521
 - on corporations, etc., 521
- waiver of, 521-522

O.

OVERHANGING TREES,

- rights with regard to, 422-423

P.

PAINTING,

- how far necessary under a general covenant to repair,
188-189

PARISH COUNCIL,

- lease by, 54

PARTIES

- to leases, 22-23

PARTY WALLS,

- obligation to repair, 402-403
- in Metropolis, 403

PAYMENT,

- plea of, to claim for rent, 143-145

PENALTY,

- reservation of additional rent by way of, 98-102
- difference between and liquidated damages, 98-102

PERMISSIVE WASTE (See "Waste")

PLANTATIONS,

- rating of, under Rating Act, 1874, 170

POOR RATE,

- occupier liable for personally, 168
 - what occupation sufficient, 168
- when owner liable to pay, 168-170
- rating of mines, woods and sporting rights, 170
- deduction of, from rent, 171
- preferential payment of, in bankruptcy, or winding up
of company, 171

POLLARDS (See "Trees")

PREFERENTIAL PAYMENT

- of rates, taxes, etc., in bankruptcy or winding up of
company, 171

PRIVATE IMPROVEMENT RATES,

- occupier liable for, 175
 - when entitled to deduct proportion from rent, 175

PROFITS A PRENDRE,

- reservation of, in lease, 78

- PROPERTY DEMISED,
 what may be, 66
 description of, 66-70
- PROPERTY TAX (See "Landlord's Property Tax ")
- PROVISO FOR RE-ENTRY,
 necessity for, 250
 construction of, 250-252
 in case of bankruptcy of tenant, 252-254
 or winding up of tenant company, 253
 who may enforce, 254
- PUBLIC BODIES,
 lease to, 60-61
- PUBLIC HEALTH ACTS,
 implied obligation on lessor under, 123-124

Q.

- QUARRIES,
 covenants as to working, 232
- QUARTERLY TENANCIES (See "Tenancies for less than
 a Year ")
- QUIET ENJOYMENT,
 implied covenant for, by lessor, 117-118
 express covenant for, by lessor, 129-134

R.

- RAILWAY COMPANY,
 lease by, 44
- RATES,
 partial exemption from, under Agricultural Rates Act
 (1896), 178
- RATES, TAXES, ETC.
 covenant to pay, 151-178
 construction of, 152-155
 landlord's taxes, what are, 152
 none as between landlord and public, 158-159
 tenant's taxes, what are, 152
 effect of increase in, on covenant to pay, 156
 deduction of, by tenant from rent, 157
 recovery from landlord, by tenant who has paid,
 157-158
 water rate not within landlord's covenant to pay, 158
 preferential payment of, in bankruptcy or winding-up
 of company, 171

REBUILD,

covenant to, distinct from covenant to repair, 191

RECEIVER,

lease by, 53

RECOVERY OF POSSESSION OF DEMISED PREMISES,

by peaceable resumption of possession, 523

by proceedings in ejectment, 524-537

(a) proceedings under C. L. P. Acts, 524-525

(b) summary procedure under R.S.C., O. XIV.,
525-527

when available, 526-527

(c) ordinary action of ejectment, 527-530

the party to be sued, 528-529

mesne profits recoverable, 529

defences open to tenant, 529

judgment, how enforced, 529-530

(d) County Court process, 530-536

proceedings under ss. 138, 139 of C. C. Act, 1888,
530-535

appeal under ss. 138-9, 534

notice by sub-tenant to immediate landlord of sum-
mons for recovery, 534

protection of landlord in case of irregularity in pro-
ceedings, 535

ordinary action of ejectment in C. C., 535-536

(e) proceedings before justices for recovery of small
tenements, 536-537

recovery of deserted premises, 537

RE-ENTRY TO REPAIR

on breach of lessee's covenant, 203

REGISTRATION OF LEASE,

in Middlesex, 258

in Yorkshire, 259

in Bedford Level, 259

assignments to be registered, 258

by way of mortgage, 259

compulsory under Land Transfer Act (1897), 259-260,
260 (note)

RELIEF AGAINST FORFEITURE (See "Forfeiture")**RENEWAL OF LEASE,**

covenant by lessor for, 134-136

by trustees, etc., 136-138

RENT,

reservation of, 90-102

RENT (continued).

- how reserved, 90-91
- what it may consist of, 91
 - must be distrainable, 91-92
- must be certain, 92-94
- sliding scale rent, 93
- must be reserved to the lessor, 94
- time of payment of, 95
- reservation of, payable in advance, 95-96
- place of payment of, 96
- reservation of, in leases of settled land, 96-98
 - "best rent," 97-98
- additional, by way of penalty or liquidated damages, 98-102
- apportionment of, 102-105
- covenant to pay, 140-151
- payment by cheque, liability of agent in accepting, 144 (note)
- defences to action for, 143-151
 - cesser of landlord's title, 143
 - eviction, 143, 148-150
 - tender, 143
 - payment, 143-145
 - effect of taking security for, 145-146
 - illegality of contract, 146
 - effect of assignment of lease, 146
 - of reversion, 146-147
 - effect of surrender, 147
 - destruction of premises, 150-151
- interest on, 151
- payment, of, before notice of assignment of reversion, 442-443

REPAIRS,

- implied covenant as to, by lessee, 127-128
- express covenant as to, by lessee, 178-205
 - in lease not exceeding three years, 185
 - in lease exceeding three years, 185-186
- general covenant to repair, 187-193
- covenant to keep in repair, 187
- covenant to keep in "tenantable" or "substantial" repair, 188-190
- covenant to "put" in repair, 188-189
- painting, how far necessary, 189
- covenant to do "necessary" repairs, 189
- breach of general covenant to repair, 190
- covenant to "repair" distinct from one to "re-build," 191

- REPAIRS**—Express covenant as to, by lessee (continued).
 tenant not bound to put in new system of drainage, 191
 tenant not liable for dilapidations occurring before execution of lease, 192
 difference between breach of covenant to “keep” in repair and to “put” or “leave” in repair, 192
 general covenant to repair extends *prima facie* to new buildings and fixtures, 192-193
 covenant to “yield up” fixtures in repair, 193
 repairing covenant in sub-lease, 193
 obligation to repair in case of fire, 193-194
 exception in case of fire or inevitable accident, 193-194
 express covenant as to, by lessor, 195-196
 impliedly authorises lessor to enter premises, 195
 remedies for breach of lessee’s covenant to repair, 196-205
 action for damages, 196-203
 measure of damages, 197-199
 damages in case of sub-lease, 199-202
 remedy of sub-lessee against sub-lessor, 202-203
 re-entry to repair, 203
 forfeiture, 203-205
- REPLEVIN** (See “Distress”)
 procedure in, 395-397
- RESCUE AND POUND BREACH** (See “Distress”)
- RESERVATION**,
 difference between and exception, 81
- RESERVATIONS IN LEASE**,
 easements in favour of lessor, 77-78
 profits *a prendre*, 78
 game, 79-80
 ground game, 80-81
- RESERVATION OF RENT** (See “Rent”)
- RESIDENCE ON DEMISED PREMISES**,
 covenant as to, 244
- REVERSION**,
 option to lessee to purchase, 138-139
 damage to, 419-420
 assignment of,
 by act of parties, 435-443
 by operation of law, 451

S.

SALE OF DISTRESS (See "Distress")

SECURITY FOR RENT,
effect of taking, 145-146

SEWERS RATE,
who liable for, 162
covenant by tenant to pay, 162
tenant having paid may deduct from rent, unless he
has covenanted to pay it, 162
is not a "parliamentary tax," 162
but is an "outgoing," 162
now included in general rate in metropolis, 177
deduction from rent of proportion representing
sewers rate, 178

SHOOTING RIGHTS (See "Game")
rating of, 170, 417-418

SLIDING SCALE RENT, 93

SMALL HOLDINGS,
compensation to tenants of (see "Compensation for
Agricultural Improvements")

SMALL TENEMENTS,
proceedings before justices to recover possession of,
536-537

SPECIAL KINDS OF TENANCIES,
as between intended vendor and purchaser of land,
305-306
as between mortgagor and mortgagee, 306-311
attornment clauses, 307-308
as bills of sale, 308-310
when valid, 310
tenancies created by mortgage deeds, 310-311
as between master and servant, 311
not within Agricultural Holdings Act, 311

SPECIFIC PERFORMANCE,
of agreement for lease, 274-286
principles on which granted, 275-276
discretionary with Court, 278-279
defences to action for, 279-284
execution of lease pursuant to decree for, 285-286

SPORTING (See "Game")

SPORTING RIGHTS,
rating of, under Rating Act (1874), 170, 417-418

STAMPS ON LEASES,

scale of duties, 268-270

provisions of Stamp Act (1891), 271-272

stamping lease after execution, 272-273

STATUTES OF LIMITATIONS,

fee simple may be acquired under,

by yearly tenant, 293-294

by tenant at will, 301-303

STRANGERS,

landlord's rights as regards, 418-423

damage to reversion, 419-420

joint reversioners, 421-422

overhanging trees, 422-423

landlord's liability to, 423-427

tenant's rights as to, 427-428

tenant's liability to, 428-429

SUB-LEASE,

repairing covenant in, identical with that in superior lease, effect of, 195

(and see "Underlease ")

SUB-LETTING,

covenant against (see "Assignment ")

SURRENDER,

plea of, to claim for rent, 147

determination of tenancy by, 474-480

by act of parties, 475-476

conditions of valid surrender, 475-476

by operation of law, 476-479

by giving up possession, 476-478

by re-letting, 478-479

operation of surrender, 479-480

effect of oral agreement to surrender, 480

T.

TENANCY AT WILL,

what it is, 296

how constituted, 297

express and implied, 297-298

how determined, 299-300

what notice to determine, necessary, 300

effect of determining, 300-301

TENANCY ON SUFFERANCE,

how created and determined, 303

TENANCIES FOR LESS THAN A YEAR,

how created, 294-295

- TENANCIES FOR LESS THAN A YEAR** (continued).
 what notice necessary to determine quarterly, etc.,
 tenancies, 295
 lodgings, 295-296, 296 (note)
- TENANT AT WILL** (See "Tenancy at Will")
 use and occupation, action for, against, 297
 may acquire fee-simple under Statutes of Limitation,
 301-303
- TENANT FOR LIFE**,
 leases by, 24-28
- TENANT FOR YEARS**,
 leases by, 29
- TENANT IN TAIL**,
 leases by, 49-50
- TENANT ON SUFFERANCE** (See "Tenancy on Sufferance")
 cannot create lease except by estoppel, 303-304
- TENANTS' COMPENSATION ACT, 1890** (See "Compensation for Agricultural Improvements")
- TENANT'S TAXES**,
 what are, 152
- TENDER**,
 plea of, to claim for rent, 143
 distress after, 353-355
- TERM OF LEASE**,
 commencement, 83-85
 duration, 85-90
- THEFT**
 by tenant or lodger, 583
- TIMBER** (See "Trees")
 right of tenant to cut necessary, for repairs of houses,
 fences, etc., 400-405
- TITHE RENT-CHARGE**,
 now payable by landlord, 163
 effect of contract by tenant to pay, 163-164
 provisions of Tithe Act, 1891, as to, 163-166
- TITLE**,
 implied covenant for, by lessor, 116-117
- TRADING**,
 covenants as to, 232-244
 (1) against trading, etc., 232-235
 against noxious trades, 235-236

TRADING—Covenants as to (continued).

- lessee bound by restrictive covenant of lessor, 236-237
 - waiver of breach of covenant, 237-238
 - license to commit breach, 238
 - remedies for breach of covenant, 238-239
- (2) to carry on particular trade, 239-240
 - tying covenants, 240
 - whether they run with the land, 241-244
- covenants against trading when may be considered "usual" covenants, 244

TREES,

- exception of, in lease, 82
- tenant's rights and liabilities with regard to, 403-408
 - as to timber trees, 404-405
 - what is timber? 404
 - property in timber trees, 404-405
 - as to windfalls, 405
 - as to non-timber trees, etc., 405-406
- covenants as to, 406-407
- rights where trees excepted from lease, 407-408

TRUSTEE,

- lease by, 48-49
- lease to, 61

TRUSTEE IN BANKRUPTCY,

- lease by, 52

TRUSTEE OF RENEWABLE LEASEHOLD,

- lease to, 64

U.

UNDERLEASE,

- difference between and assignment, 443-444
- position of underlessee to lessor, 469-472
- relief of underlessee against forfeiture by superior landlord, 470

UNIVERSITIES AND COLLEGES,

- leases by, 45

USE AND OCCUPATION, ACTION FOR,

- in case of informal tenancies, 312
- what must be proved in, 313
- constructive occupation, 313-314
- in case of tenant "holding over," 314-315
- where there is an actual demise, 315-316
- persons who may sue and be sued in, 316-317

- USE AND OCCUPATION, ACTION FOR (continued).
 occupation must be by permission of landlord,
 317-318
 position of executors and administrators, 318-319
 trustees in bankruptcy, 319
 corporations, 319-320
 intended lessees, etc., 320-321
 measure of damages in, 321
- "USUAL" COVENANTS,
 what are, 139-140 (note)

V.

- VENDOR AND PURCHASER,
 tenancy as between intended, 305-306
- VOLUNTARY WASTE (See "Waste")

W.

- WAIVER (See "Forfeiture")
- WALKING POSSESSION (See "Distress")
- WASTE,
 implied covenant as to, by lessee, 127-128, 179-184
 definition of, 180-182
 "voluntary" or "commissive," 180-182
 "meliorating," 182
 "equitable," 182
 "permissive," 182-183
 landlord's remedies for, 183-184
 not waste to leave land uncultivated, 221 note
- WATER RATE,
 not within landlord's covenant to pay rates, taxes,
 etc., 158, 176-177
 occupier liable for, unless landlord has agreed to pay,
 175
 company may not cut off water, where owner liable
 for, 175-176
- WEEKLY TENANCIES (See "Tenancies for less than a
 Year")
- WINDFALLS (See "Trees")
- WINDING UP,
 proviso for re-entry in case of, 253
- WOODS,
 rating of, under Rating Act, 1874, 170

WORKING CLASSES,

implied condition on letting unfurnished houses, etc.,
to, 124-125

WORKING THE DEMISED PROPERTY,

covenants as to, 221-232
agricultural covenants, 221-229
mining covenants, 229-232

WRONGFUL DISTRESS,

liability of landlord for, 369-370
remedies of tenant for, 391-397

Y.

YEARLY TENANCY,

definition of, 289
how created, 289-290
implied, under what circumstances, 7-13, 290-293
leases by yearly tenants, 293
duty to fence in case of, 401-402

YEARLY TENANT (See "Yearly Tenancy")

may acquire fee simple under Statutes of Limitations, 293-294

LIST OF AUCTIONEERS' STATIONERY

SOLD AT THE

“Estates Gazette” Office

(FRANK P. WILSON, PROPRIETOR),

6, ST. BRIDE STREET, FLEET STREET, E.C.

Established 1858.

*Terms Cash, with a discount of 5 per cent. on orders of £3.
P.O.O's., payable to FRANK P. WILSON at the Ludgate Circus
Post Office, should accompany Orders.*

ACCOUNT SHEETS—Single, ruled to ledger pattern both sides, 1s. per quire, 18s. per ream.

AUCTIONEERS' SAND GLASS—In case, for Biddings, to run down in 1 minute, 45 secs. or 30 secs., 4s. 6d. each. Postage 2d. extra; not responsible for breakage in the post.

BLOTTING PAPER—Best quality, red and white, 1s. 6d. per quire, 25s. per ream.

BOOK POST WRAPPERS for Catalogues, well gummed, printed name and address, size 10in. by 6in., 6s. 6d. per thousand.

“ “ for Particulars, size 13in. by 8in., 10s. 6d. per thousand

CATALOGUE COVERS—Octavo, 9d. per dozen (11d. by post).

Quarto, 1s. per dozen (1s. 3d. by post).

“ **INTERLEAVING PAPER**—Ruled 32 or 42 lines, 7s. per ream, 6d. per quire (by post 2d. extra).

“ **CASES**—Wooden Boards covered roan leather, with name and address in gold, 6s. 6d. each; plain 3s. 6d. each.

CATTLE NUMBERS—See pages 6 to 9 for specimens and prices.

N.B.—Auctioneers having special designs of their own are invited to send for estimates for supplying the same.

CATTLE OR HORSE TALLIES—Printed name and address on good Manilla card and eyeletted, size 5in. by 2½in. 10s. 6d. per 1,000.

COMPOSITE SALE AND LEDGER BOOKS for use in clerking outdoor sales, stiff covers, size 10in. by 5in., price 8d. each, 7s. per dozen.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.

DELIVERY ORDERS, loose, large post octavo (8in. by 5in.), with perforated counterpart, and name and address printed at top, (see specimen on page 11)—

Short, 5s. 6d. per 1,000.

Long, 7s. per 1,000.

„ without name and address—

Short, 9d. per 100 (11d. by post), 4s. 9d. per 1,000.

Long, 1s. per 100 (1s. 2d. by post), 6s. per 1,000.

„ in books, quarter bound, marble covers, with label and index—Summary.

50 leaves, 10d. each, 8s. 6d. per dozen.

75 leaves, 1s. each, 11s. per dozen.

100 leaves, 1s. 3d. each, 13s. 6d. per dozen.

„ Foolscap quarto (8in. by 6½in.), in marble covers with label and index and printed name and address, 50 leaves, 10s. 6d. per dozen, 100 leaves, 16s. 6d. per dozen.

FIELD BOOKS—Size 6½in. by 4in., 64 pages, 1s. each (by post 1s. 2d.), 10s. per dozen.

FIELD VALUATION BOOKS—Large post octavo (8in. by 5in.), 120 pages, 1s. 6d. each, 16s. per dozen. Also made to pattern. See specimen on page 12, No. 2.

FOOLSCAP, superfine for agreements, ruled 3 sides, margin and faint, 1s. 6d. per quire, 25s. per ream. Cheaper quality, 18s.

„ Ditto fine cream laid, ruled faint, on 4 sides, 10s. and 12s., ruled cash 6d. per ream extra.

„ Special value, 6d. per quire, 8s. per ream.

FURNITURE LOT NUMBERS—See specimens and prices given on page 10.

HAMMERS—In Wood, 2s. each; in ebony, 2s. 6d.

„ In Ivory, with Mordan's silver mounted pencil, 7s. 6d.; spring top, 8s. 6d.; larger size, 8s. 6d. and 9s. 6d. For illustration see page 11.

„ Ivory (large, 8s. 6d., 10s. 6d., and 12s. 6d. each.

Presentation Hammers made to order.

HAY AND STRAW TABLES, by G. C. Phillips, P.A.S.I.—Price 1s. on card. folded, for the pocket.

HOUSE AGENTS' REGISTER—250 pages, ruled, paged, indexed, and strongly bound, 12s. 6d. each. For specimen of ruling see pages 12 and 13, Nos. 4 and 6.

HOUSE AGENTS' "TO LET" BILLS, Partly Printed, with space for name and address left blank. Crown (20in. by 15in.). Price 10d. per doz.

„ "Offices on Floor to Let. Apply"

„ "These Premises to Let. Apply"

„ "Offices to Let. Apply"

„ "This Warehouse to Let. Apply"

„ "Shop to Let. Apply"

„ "To be Let or Sold. Apply"

„ "This House to Let. Apply"

„ "This Basement to Let. Apply"

„ "To be Sold. Apply"

„ "To be Let. Apply"

INVENTORY BOOKS—(7½in. by 5in.), ruled, with or without interleaved blotting, bound red basil, with clasps, 1s. 6d. each (by post 3d. extra), 16s. per dozen.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.

- INVENTORY BOOKS**—Best quality, 2s. each (by post 3d. extra), 22s. per dozen.
" " Foolscap octavo (6in. by 4in.), ruled and paged, 1s. each, 10s. 6d. per dozen.
- PAPER**—Good cream laid, 9d. per quire (by post 2d. extra.)
" " 10s. 6d. per ream.
" " Better quality, cream, 10d. per quire, 12s. 6d. per ream.
- COVERS**—Blue or buff, with printed label, 1s. per dozen. By post 3d. extra.
" " Cloth, with name and address in gold, 7s. 6d. per dozen.
" " Marble, 1s. 3d. per dozen. By post 3d. extra.
- BOOKS**—(for fair copies), with printed label :—
" " 8 leaves, 2s. 6d. per dozen.
" " 16 leaves, 4s. per dozen.
" " 24 leaves, 5s. 6d. per dozen.
" " Half-bound roan, post quarto (9in. by 7in.), 80 pages, 2s.; 130 pages, 2s. 3d.; 180 pages, 2s. 6d.; 250 pages 3s.; 300 pages, 3s. 6d.; 400 pages, 4s. 6d.; and 500 pages, 5s. each.
- LEATHER TABLET**—Size 9in. by 6in., to fold in half, with name and address in gold on black leather, for rostrum, from 5s. to 8s., according to lettering and quality.
- LEVELLING BOOKS**—64 pages, size 7½in. by 5½in., rounded corners, 1s. 6d. each (by post 1s. 8d.), 16s. per dozen. See specimen on page 12, No. 3.
- LINEN TICKETS**—About 2in. long and ¾in. wide, with metal eyelet hole, for lotting goods when the other lot tickets cannot be stuck on the article, 7d. per 100, or 4s. 6d. per 1,000.
- MANILLA LABELS**—Plain, strong and eyeletted, are kept in stock in all sizes. Prices from 4s. 6d. to 11s. 6d. per 1,000—if with name and address, &c., 2s. per 1,000 extra. Stringing, 2s. per 1,000 extra. For some of the sizes see page 4.
- MEMORANDUM BOOKS** (Foolscap 8vo.)—Bound in stiff board covers, ruled plain or with cash columns, and printed name and address on cover, 20 leaf, 16s. 6d. per gross; 40 leaf, £1 1s. per gross.
- NOTE PAPER AND ENVELOPES**—Prices on application.
- ORDERS TO VIEW**—In books of 100 (printed in litho), with counterpart perforated, 1s. 6d. each (postage 2d. extra), 15s. per dozen; also made to pattern.
- PLATE NUMBERS**—For prices and specimen see page 10.
- POSTING SLIPS**—Printed in red or blue, "Sale this Day," "Sale this Evening," "On View," "Sale Postponed," "Sale Now On," "Sold," "For Sale by Private Treaty," "Sale Unavoidably Postponed," "Sale To-morrow," and "Sale for Each Day of the Week," 6d. per dozen, 2s. 6d. per 100, assorted or otherwise.
- REGISTER SHEETS**—Ruled as per specimens on pages 12 and 13, Nos. 4 and 6. Price 2s. per quire, 30s. per ream. Also made to pattern.
- RENTAL BOOKS**—Large post quarto, for office use, bound in cloth, 3s. 6d. each (by post 3s. 9d.).
- RENTAL SHEETS**—Loose, for rendering accounts to clients, short (13in. by 5½in.), 3d. per dozen; long (13in. by 11in.), 6d. per dozen.
- RENT COLLECTING BOOKS FOR WEEKLY TENANCIES**, for the use of Landlords and their Agents. Price 1s. each (by post 1s. 2d.), or 10s. per doz.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.

RENT BOOKS FOR TENANTS—One quarter on a page, 1d. each, 10d. per dozen; ditto, different pattern, 10d. per dozen, 9s. per gross.

RENT RECEIPT BOOKS—Quarter bound, 100 in each book, Letterpress, 1s. each.
 " " " Litho, 2s. each.

REPORT PAPER—For Valuations (hand made), 14s. per ream, or 10d. per quire.

RYDE'S SCALE OF FEES ALLOWED IN COMPENSATION CASES (on cardboard and paper), 3d. each.

SALE BOOKS—Size 7in. by 5in., strongly bound in boards with leather backs, 200 pages ruled cash columns or as specimen on page 13, No. 8. Price, with cash, 8s. per doz.; ruled and printed, 12s. per doz.

SALE BOOKS for Furniture Sales (ruled) in stiff covers, with label, 12 leaf, 3s. per doz.; 20 leaf, 4s. per doz. See specimen on page 13, No. 7.

SALE BOOKS—Different pattern, 20 leaf, 21s. per gross; 40 leaf, 30s. per gross; also made up in books of 150 leaves, 15s. per doz.

SALE SHEETS—Loose, ruled, 6d. per quire, 12s. per 1,000, or ruled to pattern.

SALE ACCOUNT SHEETS—(Two kinds and sizes), for rendering Statements to clients, printed name and address at top, 6s. 6d. per 100; and 10s. 6d.

SALE LEDGERS—Cream wove interleaved blotting, with cover and label:—
 " Octavo, 1 day's sale, 3 letters, 6d. each, 3s. 6d. per dozen.

" " 2 " 2 " 7d. " 5s. 0d. "

" " 3 " 1 " 9d. " 7s. 6d. "

" Quarto, 1 day's sale, 4 letters, 5d. each, 4s. 0d. per dozen.

" " 1 " 3 " 6d. " 5s. 0d. "

" " 2 " 2 " 9d. " 7s. 6d. "

" " 3 " 1 " 1s. " 10s. 0d. "

" Extra leaf (unlettered), front and back, 1s. per dozen extra on all sizes. Postage extra.

" Different pattern, 4s. and 5s. 6d. per doz.

SPECIFICATION PAPER—10d. per quire, 14s. per ream.

SURVEYING BOOKS—Ruled and bound leather backs, 64 pages, 1s. each (by post 1s. 1d.), 10s. per dozen, size 8in. by 5in.

THE LONDON INSTITUTE OF ESTATE AGENTS' TERMS OF COMMISSION—6d. per dozen.

TIMBER BOOKS (revised), used by leading firms, with Timber Tables on cover, on good hand-made paper, 2s. each, 22s. per dozen (size 8in. by 3½in.).

TIMBER TABLES—3d. each.

TIMBER VALUING BOOKS—1s. 6d. each, 16s. per dozen (size 8in. by 5in.).

TRACING CLOTHS AND PAPERS—Various qualities. Prices on application.

VALUATION BOOKS—Strongly bound, with elastic band and pocket, single or double cash, 18s. dozen.

MANILLA TABS.

Prices from 4s. 6d. to 11s. 5d. per 1,000; with name and address 2s. per 1,000 extra.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.

AGREEMENT FORMS.

(Foolscap, 3s. per quire.)

Agreement for the Sale of a Business.

Agreement for a Lease.

Building Agreement.

Public House Transfer.

To Let a Shop (term in blank).

" " for three years.

" Small Tenements.

" a House (term in blank) three kinds, A. B. C.

" Cottage

To Let a House for one year.

" " for three years.

" Furnished House or Apartments.

" Offices or Warehouse.

Sale of Freeholds.

" Copyholds.

" Leaseholds.

Walking Possession Agreement—Tenant and Bailiff.

(Demy 3d. each, or 5s. per quire.)

To Let a Farm, with Schedule.

NOTICES TO QUIT.

(1s. 6d. per quire.)

Apartments—Landlord to Tenant. Apartments—Tenant to Landlord. House and Premises—Landlord to Tenant. House and Premises—Tenant to Landlord.

Notice under the Agricultural Holdings Act, 1883.

VARIOUS NOTICES, &c.

(1s. 6d. per quire.)

Appraisement Forms. Mortgage Loan Forms. Notice to Pay Rent to Mortgagee. Notice to Pay Rent to Attorney of Mortgagee. Notice requiring Payment of Mortgage, and of Sale in Default. Notice of Intention to Pay Off Mortgage. Notice of Intention to Apply for Ejectment Order. Notice by Tenant claiming compensation under the Agricultural Holdings Act, 1883. Notice of counterclaim by Landlord. Complaint before Justices for Recovery of Possession after due determination of Tenancy. Request for Appraisement. The ditto Declaration by Lodger.

DISTRESS FORMS.

(1s. 6d. per quire.)

Single Warrants.

Notice of Distress with Inventory.

Distress Warrant, Notice and Inventory. Distress Warrant, Notice and Inventory, under the Agricultural Holdings Act, 1883.

Request and consent to keep possession beyond 5 days.

Request for extension of time to Replevy.

Requests to Remove Goods.

Requests to Hold over Distress.

" Sell Distrained Goods.

Notice by Landlord to Sheriff of Rent Due.

Request by a Tenant to remain in possession for more than 5 days under Section 6 of the Law of Distress Amendment Act, 1888.

HEADED PAPERS.

Litho, ruled red lines with feint.

Foolscap, 3s. per quire.

Memorandum of Agreement.

Valuation. Inventory.

Report, Survey and Valuation.

Report and Survey.

This Indenture.

Report.

Demy, 4s. per quire.

Inventory and Valuation.

Report and Valuation.

An Agreement.

Valuation Forms for Estate Duty (Real and Personal).

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.

CATTLE NUMBERS.

—:0:—

These have been greatly revised and improved and Prices reduced, and will, we trust, be found fully up to the requirements of the day.

PLAIN CATTLE NUMBERS

Without Name and Address, as specimens below.

134


Plain Black Cattle Lot Numbers (perforated only), 25 numbers on a sheet, 1d. a sheet or 1s. 6d. a quire. If gummed and perforated, 2d. a sheet, or 2s. 6d. a quire. Postage 2d. a quire extra. They extend from 1 to 500; from 501 to 1,000, 2d. per sheet, perforated only.

275

Oblong Cattle Lot Numbers, perforated, printed in BLACK, 25 numbers on a sheet, 2d a sheet, or 2s. 6d. a quire. Postage 3d. a quire extra. These extend from 1 to 200.

Ditto, with space for number left blank, 1½d. per sheet, or 2s. per quire.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.



309

Oval Cattle Lot Numbers, perforated and printed in **BLUE**, 25 numbers on a sheet, 2d. a sheet, or 2s. 6d. a quire. Postage 3d. a quire extra. If gummed, 3d. per sheet, or 4s. per quire. These extend from 1 to 500. Mounted on millboard, with eyelet, 5s. per 100 numbers.

Ditto with space for number left blank, 1½d. per sheet, or 2s. per quire.

PLAIN CATTLE NUMBERS.

Bold Figures in RED INK, cut circular, punched out and put up in packets. Price 2s. 6d. per dozen sets of 25 numbers in a set. These extend from 1 to 100.

SMALLER NUMBERS FOR IMPLEMENTS, &c.

Lot 688

Numbers about three-quarters of an inch high, perforated, 50 numbers on a sheet, 1d. a sheet, or 1s. 6d. a quire. If gummed, 2d. per sheet or 2s. 6d. per quire. Postage 2d. a quire extra. These extend from 1 to 999.

The same figure without the word "Lot," 100 numbers on a sheet, 1d. a sheet or 1s. 6d. per quire, perforated only. If gummed, 2d. per sheet, 2s. 6d. per quire.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.

PRINTED AUCTIONEER'S NAME AND ADDRESS, as below:



Red Figures with name and address in Black or Blue, punched out and put up in packets. Printed on paper—25 sets, 1 to 50, or 50 sets, 1 to 25, 9s. 6d.; 50 sets, 1 to 50, 17s.; and 100 sets, 30s. On linen backed paper, 12s. 6d. per 1,000;

5,000 for 52s. 6d., put up in sets. Smaller circle than above supplied, if required. Special quotations for larger quantities. With Name and Address, but space for number left blank, 1s 6d. per 100.

T. WALKER & SONS

178

AUCTIONEERS, YORK.

Black Figures with Name and Address in Red, punched out and put up in packets. Prices, same as above.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.



RED FIGURES—Printed Name and Address in black or blue, punched out and put up in packets. Prices same as on page 8.



OVAL—Printed in all black or red, on linen backed paper, 25 sets, 1 to 50 or 50 sets, 1 to 25, price 15s. Ditto, on cardboard and eyeletted, price 3s. per 100

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.

FURNITURE LOT NUMBERS.

Lot 173

Furniture Lot Numbers, perforated and gummed, as per specimen above, are sold in books containing 24 sheets of numbers, 100 numbers on a sheet, price 1s. 8d. each book (by post 2d. extra).

Book 1 contains 24 sets of numbers, from 1 to 100;

Book 2 " " " " 101 to 200;

Book 3 " " " " 201 to 300;

And so on up to 1,000.

Also in Books, similar to above, 24 sheets of 50 numbers on a sheet, price 10d. each. These extend from 1 to 1,000.

Loose Single Sheets, of 100 numbers on a sheet, similar to the above, are also kept in stock. Price 2d. per sheet, or 3s. per quire. These extend from 1 to 1,000. Above 1,000 the price is 1½d. a sheet of 50 numbers, or 2s. per quire.

51

Lot Numbers, without the word "Lot," as above, gummed and perforated, in books of 50 numbers on a sheet, 24 sheets to a book, price 6d. each.

Book 1 contains 24 sets from 1 to 50;

Book 2 " " 51 to 100;

Book 3 " " 101 to 150;

And so on up to 1,000.

They can also be had loose in sheets, at 1d. per sheet, or 1s. 6d. per quire.

Blank Numbers, gummed and perforated, with the word "Lot" only, a blank being left for the number, are kept in books of 24 sheets, 100 numbers on a sheet, price 10d. each.

Plain Numbers—Without gum or perforation.

Books containing plain Lot Numbers for Furniture are kept, 48 pages in each book, price 1s. Book 1 contains Lots 1 to 50; book 2, 51 to 100; book 3, 101 to 150; and so on up to Lot 600. Postage extra.

Lot 156

Larger Size Furniture Lot Numbers.—Sold in sheets of 100, 3d. per sheet or 3s. 6d. per quire. These extend from 1 to 1,000.

Ditto, without the word "Lot," in books of 50 numbers on a sheet, 24 sheets to the book, price 9d. per book. These are also kept in single sheets, price 1½d. each.

Lot 233

Lot 123

Lot 739

Small numbers, intended for sales of plate or other small articles; 100 numbers on a sheet, 1½d. a sheet or 2s. a quire. These extend from 1 to 1,000.

ONLY address "Estates Gazette," 6, St. Bride Street, E.C.



HAMMERS.

SILVER-MOUNTED
AUCTIONEERS' HAMMER & SLIDING PENCIL.

Silver Mounted Ivory Hammer (as per specimen above)	-	Spring top.	Plain.
	-	9/6	8/6
Ditto smaller size -	-	8/6	7/6
Ivory (large)	-	8/6, 10/6 and 12/6 each.	
Wood Hammers	-	-	2/0 each.
Ebony "	-	-	2/6 each.

M
Bought at
Sale.
190

M
Bought at
Mr.
190

Sale.
Auctioneer.
190

LOT.	£	s.	d.	LOT.	£	s.	d.
ESTATES GAZETTE, 6, St. Bride St. London.				With Name and Address printed at top—			
				Short, 5s. 6d. per 1,000.			
				Long. 7s.			
				Without Name and Address—			
				Short 9d. per 100.			
				Long 1s.			

1.—Specimen Page of Rent Collecting Book.

(See page 3)

No. of House.	TENANT'S NAME.	Rent Weekly.	WEEKLY PAYMENTS.	Total Received.	Arrears Br'ght over.	Total Due.	Arrears to Date.

2.—Specimen Page of Field Valuation Book.

(See page 2)

No. on Plan.	Description.	State of Cultivation.	Contents. A. R. P.	Value per Acre.	Annual Value. £ s. d.	REMARKS.

3.—Specimen Page of Levelling Book.

(See page 3)

Back Sight.	Intermediate.	Fore Sight.	Rise.	Fall.	Height above Base.	Distance.	Remarks.

4.—Specimen of House Agent's Register.

(See page 2)

FO.	SITUATION.	Detached or Semi-Detached.	Bed Rooms	Bath and Dressing Rooms.	Reception Rooms.	Garden and Stabling.	RENT.	Price or Premium.	LEASE.	Ground Rent.	REMARKS.	Date of Entry.

5.—Specimen Page of Timber Valuing Book.

(See page 3)

Description.	No. OF TREE.	LENGTH. Feet.	QR. GIRT. Inches.	SOLID FEET.	Value per Foot.	Value per Tree. £ s. d.

6.—Specimen of House Agent's Register.

(See page 3)

Fo.	NAME	ADDRESS.	Reception Rooms Billiard Room (b).	Bed Rooms.	Dressing Room (d) Bath Room (b).	Stalls.	PRICE.	GROUND RENT.	LEASE.	UNFURNISHED.	FURNISHED.	REMARKS.
										per ann.	per ann. per week.	

7.—Specimen of Sale Book.

(See page 3)

No.	ARTICLE.	NAME OF PURCHASER.	PRICE.	CASH.

8.—Specimen of Ruled Sale Book.

(See page 4.)

No. of Lot.	Description of Articles.	Amount Sold for.	Purchaser.	Cash.

Books Published

AT THE "Estates Gazette" Office.

Crown 8vo. Price 2s. 6d., by post, 2s. 8d.
AGRICULTURAL RATES ACT, 1896, with Introduction and Notes, and the Agricultural Rates Order, 1896. A useful guide for Land Agents, Valuers, and Agriculturists. By SIDNEY WRIGHT, M.A.

Second Edition. Crown 8vo. Price 6s.; for cash, 5s., by post, 5s. 4d.
AUCTION LAW, A Handbook of.—An invaluable work of reference for Auctioneers. Revised and brought up to date. By W. ARCHBUTT POCKOCK, of the Middle Temple, Barrister-at-Law.

New (fifth) Edition. Demy 8vo. Price 6s.; for cash, 5s., by post, 5s. 4d.
THE AUCTIONEERS' MANUAL.—A complete Guide to the Law and Practice of Auctioneers. Contains Scales of Professional Charges, Forms of Agreement, Specimen Title Pages, Conditions of Sale and Catalogues, Methods of Keeping Accounts of Sales, &c. &c. An entirely new edition, revised and brought up to date by W. F. NOKES.

Crown 8vo. Price 7s. 6d.; for cash, 6s., by post, 6s. 4d.
COMMISSION CASES, A Compendium of.—Contains a collection of all important cases as to Auctioneers' and Estate Agents' Commission. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.

Crown 8vo. Price 12s. 6d.; for cash 10s. 6d., by post, 11s.
COMPENSATION, Principles and Practice.—A comprehensive work on this important subject. It treats of the history and principles of Compensation Cases, the parties and subject matter of Claims and the preparation of same, Assessments for Compensation, etc., together with precedents for use under the Lands Clauses Acts, the text of important statutes and an index reference to all Compensation Claims heard and disposed of since 1885. By H. C. RICHARDS, Q.C., M.P., of Gray's Inn and the Middle Temple, and J. P. H. SOPER, Esq., B.A., LL.B., of Lincoln's Inn, Barrister-at-Law.

Second Edition. Crown 8vo. Price 6s.; for cash, 5s., by post, 5s. 3d.
DILAPIDATIONS, The Law and Practice of.—A valuable Guide and Handbook to this difficult subject. By A. T. MACER, P.A.S.L., The legal matter revised by SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law. New Edition, thoroughly revised and brought up to date.

Crown 8vo. Price 10s.; for cash 7s. 6d., by post, 7s. 10d.
LAND AGENCY.—An entirely New Edition of "Garner's" work, edited and revised by HERBERT W. RAFFETY, F.S.L., the legal matter by FRANK W. RAFFETY, of the Middle Temple, Barrister-at-Law.

Demy 8vo. Price 12s. 6d.; for cash, 10s. 6d., by post, 10s. 10d.
LANDED ESTATES, The law relating to.—Land, Manor, Farm, Field, Crops, Stock, Labour, etc. This work contains a resumé of the law upon the most important matters connected with the Sale, Purchase and Possession of Landed Property; with an Appendix containing the Customs of the Country and the most important statutes connected with the subject. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law.

Crown 8vo. Price 12s. 6d.; for cash, 10s. 6d.; post free 11s.
LANDLORD AND TENANT.—A practical and concise exposition of the modern law relating to Landlord and Tenant. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law.

Crown 8vo. Price 6s. ; for cash, 5s., by post, 5s. 4d.

LEASES, Principles and Points.—A Handbook to the Law of Leases : for Landlords, Tenants, and House Agents. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.

250pp. Crown 8vo.

Price 6s. ; for cash, 5s., by post, 5s. 4d.

LIGHT AND AIR, The Law of.—This is one of the best text books on the subject of Light and Air yet published. The method of arrangement is so simple and complete as to make the present position of this difficult subject easy of comprehension to both professional and lay minds. Illustrated by diagrams. By A. A. HUDSON, of the Inner Temple, Barrister at-Law ; and ARNOLD INMAN, of the Inner Temple, Barrister-at-Law.

Crown 8vo.

Price 6s. ; for cash, 5s., by post, 5s. 4d.

METROPOLITAN SANITATION, with appendix.—Containing the Public Health Act, 1891 ; the Bye-Laws issued by L.C.C. and local authorities ; also the various Sanitary Regulations in force throughout the Metropolis. By W. HERBERT DAW, F.S.I.

Crown 8vo.

Price 6s. ; for cash, 5s., by post, 5s. 4d.

POTTERY AND PORCELAIN.—A practical handbook and guide to the various Manufactures of China, Faïence and Enamels, both English and Foreign ; with a concise explanation of the principal features of each. Illustrated by the marks of the best-known factories.

Crown 8vo., 600pp.

Price 12s. 6d. ; for cash, 10s. 6d., by post, 11s.

RATING.—This work, which is written from a Surveyor's standpoint, gives under three heads—Principles, Practice and Procedure—a clear and comprehensive survey of all the matters appertaining to this difficult subject. In addition to the pages devoted to the rating of land and buildings, exhaustive chapters are devoted to the complex points arising out of the rating of Railways, Canals, Tramways, Gas and Water Companies, Docks Harbours and Piers. By P. MICHAEL FARADAY (Rating Surveyor) the Legal matter revised by STANLEY A. LATHAM, LL.B., of the Parliamentary Bar, A.I.C.A., F.R.S.S.

New (third) Edition. Crown 8vo. Price 4s. 6d. ; for cash, 3s. 6d., by post, 3s. 9d.

LAW OF DISTRESS.—A comprehensive Guide, containing the text of the Law of Distress Amendment Act and the New Rules thereunder ; carefully revised, with References and Cases brought up to date. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.

Second Edition. Crown 8vo.

Price 6s. ; for cash, 5s., by post, 5s. 4d.

THE LAW OF FIXTURES.—A concise manual on this important subject ; with Appendix of Statutes, Leading Cases, &c. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law, assisted by a Member of the Surveyors' Institution. New Edition : carefully revised and brought up to date.

Crown 8vo.

Price 6s., by post, 6s. 4d.

THE LAND AND HOUSE PROPERTY YEAR BOOK.—Published annually. A Guide to Investment in Real Estate, showing at a glance the Results of Sales at the London Auction Mart, as well as in the Suburbs and the Principal Provincial Centres.

Fcap 8vo.

Price 2s. ; for cash, 1s. 6d., by post, 1s. 7d.

TRUSTEES IN BANKRUPTCY : their Duties, Powers, and Responsibilities. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law.

Crown 8vo.

Price 6s. ; for cash, 5s., by post, 5s. 4d.

VALUATION OF LAND AND HOUSES.—This work will prove invaluable to Valuers and Surveyors in practice, whilst for students and Pupils it forms a text book on a most important subject. By CHARLES E. CURTIS, F.S.I., with Valuation Tables, by D. T. DAVIES, F.S.I., and Indication, etc. by IVOR CURTIS, B.A. (Cantab).

Demy 8vo.

In cloth 5s. ; by post 5s. 6d.

Half calf 6s. ; by post 6s. 6d.

DIARY AND DIRECTORY.—For the use of Surveyors, Auctioneers, Land and Estate Agents.

Printing and 

Lithography.

AUCTIONEERS' PARTICULARS, POSTING BILLS,
CATALOGUES OF SALE, AND EVERY
DESCRIPTION OF PRINTING EXECUTED WITH
PROMPTITUDE AND AT MODERATE PRICES AT

The "ESTATES GAZETTE" Printing Works

16, 17 and 18,

Harp Alley, St. Bride Street, London, E.C.



LITHOGRAPHED DRAWINGS of Every Description, Maps and Plans of Estates,

Architectural Drawings and Landscapes,

DRAWN BY FIRST-RATE ARTISTS WITH THE UTMOST EXPEDITION.



SEND FOR ESTIMATES—

"Estates Gazette" Office, 6, St. Bride Street, London, E.C.

Books Published at the "Estates Gazette" Office.

Crown 8vo.

Price 2s. 6d., by post, 2s. 8d.

AGRICULTURAL RATES ACT, 1896, with Introduction and Notes, and the Agricultural Rates Order, 1896. A useful guide for Land Agents, Valuers, and Agriculturists. By SIDNEY WRIGHT, M.A.

Second Edition.

Crown 8vo.

Price 6s.; for cash, 5s., by post, 5s. 4d.

AUCTION LAW, A Handbook of.—An invaluable work of reference for Auctioneers. Revised and brought up to date. By W. ARCHBUTT POCOCK, of the Middle Temple, Barrister-at-Law.

New (fifth) Edition.

Demy 8vo.

Price 6s.; for cash, 5s., by post, 5s. 4d.

THE AUCTIONEERS' MANUAL.—A complete Guide to the Law and Practice of Auctioneers. Contains Scales of Professional Charges, Forms of Agreement, Specimen Title Pages, Conditions of Sale and Catalogues, Methods of Keeping Accounts of Sales, &c. &c. An entirely new edition, revised and brought up to date by W. F. NOKES.

Crown 8vo.

Price 4s. 6d.; for cash, 3s. 6d., by post, 3s. 9d.

COMMISSION CASES, A Compendium of.—Contains a collection of all important cases as to Auctioneers' and Estate Agents' Commission. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.

Crown 8vo.

Price 12s. 6d.; for cash 10s. 6d., by post, 11s.

COMPENSATION, Principles and Practice.—A comprehensive work on this important subject. It treats of the history and principles of Compensation Cases, the parties and subject matter of Claims and the preparation of same, Assessments for Compensation, etc., together with precedents for use under the Lands Clauses Acts, the text of important statutes and an index reference to all Compensation Claims heard and disposed of since 1885. By H. C. RICHARDS, Q.C., M.P., of Gray's Inn and the Middle Temple, and J. P. H. SOPER, Esq., B.A., LL.B., of Lincoln's Inn, Barrister-at-Law.

Second Edition.

Crown 8vo.

Price 6s.; for cash, 5s., by post, 5s. 3d.

DILAPIDATIONS, The Law and Practice of.—A valuable Guide and Handbook to this difficult subject. By A. T. MACER, P.A.S.L. The legal matter revised by SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law. New Edition, thoroughly revised and brought up to date.

Crown 8vo.

Price 10s.; for cash 7s. 6d., by post, 7s. 10d.

LAND AGENCY.—An entirely New Edition of "Garnier's" work, edited and revised by HERBERT W. RAFFETY, F.S.L., the legal matter by FRANK W. RAFFETY, of the Middle Temple, Barrister-at-Law.

Demy 8vo.

Price 12s. 6d.; for cash, 10s. 6d., by post, 10s. 10d.

LANDED ESTATES, The law relating to.—Land, Manor, Farm, Field, Crops, Stock, Labour, etc. This work contains a resumé of the law upon the most important matters connected with the Sale, Purchase and Possession of Landed Property; with an Appendix containing the Customs of the Country and the most important statutes connected with the subject. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law.

Crown 8vo.

Price 6s.; for cash, 5s., by post, 5s. 4d.

LEASES, Principles and Points.—A Handbook to the Law of Leases; for Landlords, Tenants, and House Agents. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.



350pp. Crown 8vo. Price 6s. ; for cash, 5s., by post, 5s. 4d.

LIGHT AND AIR, The Law

books on the subject of Light and Air. The arrangement is so simple and on the subject of this difficult subject easy and lay mind. Illustrated by CHARLES E. CURTIS, of the Inner Temple, Barrister-at-Law; and ARNOLD INMAN, of the Inner Temple, Barrister-at-Law.

Crown 8vo. Price 6s. ; for cash, 5s., by post, 5s. 4d.

METROPOLITAN SANITATION, with appendix.—Containing the Public Health Act, 1891; the Bye-Laws issued by L.C.O. and local authorities; also the various Sanitary Regulations in force throughout the Metropolitan Area. By W. HERBERT DAW, F.S.E.

Crown 8vo. Price 6s. ; for cash, 5s., by post, 5s. 4d.

POTTERY AND PORCELAIN.—A practical handbook and guide to the various Manufactures of China, Faience and Enamels, both English and Foreign; with a concise explanation of the principal features of each. Illustrated by the marks of the best-known factories.

Crown 8vo., 600pp. Price 12s. 6d. ; for cash, 10s. 6d., by post, 11s.

RATING.—This work, which is written from a Surveyor's standpoint, gives under three heads—Principles, Practice and Procedure—a clear and comprehensive survey of all the matters appertaining to this difficult subject. In addition to the pages devoted to the rating of land and buildings, exhaustive chapters are devoted to the complex points arising out of the rating of Railways, Canals, Tramways, Gas and Water Companies, Docks, Harbours and Piers. By P. MICHAEL FARADAY (Rating Surveyor), the Legal matter revised by STANLEY A. LATHAM, LL.B., of the Parliamentary Bar, A.L.O., F.R.S.S.

New (third) Edition. Crown 8vo. Price 4s. 6d. ; for cash, 3s. 6d., by post, 3s. 9d.

LAW OF DISTRESS.—A comprehensive Guide, containing the text of the Law of Distress Amendment Act and the New Rules thereunder; carefully revised, with References and Cases brought up to date. By G. ST. LEGER DANIELS, LL.B. (Lond.), of the Middle Temple, Barrister-at-Law.

Second Edition. Crown 8vo. Price 6s. ; for cash, 5s., by post, 5s. 3d.

THE LAW OF FIXTURES.—A concise manual on this important subject; with Appendix of Statutes, Leading Cases, &c. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law, assisted by a Member of the Surveyors' Institution. New Edition: carefully revised and brought up to date.

Crown 8vo. Price 6s. ; for cash, 5s., by post, 5s. 4d.

THE LAND AND HOUSE PROPERTY YEAR BOOK.—Published annually. A Guide to Investment in Real Estate, showing at a glance the Results of Sales at the London Auction Mart, as well as in the Suburbs and the Principal Provincial Centres.

Fcap 8vo. Price 2s. ; for cash, 1s. 6d., by post, 1s. 7d.

TRUSTEES IN BANKRUPTCY: their Duties, Powers, and Responsibilities. By SIDNEY WRIGHT, M.A., of the Middle Temple, Barrister-at-Law.

Crown 8vo. Price 6s. ; for cash, 5s., by post, 5s. 4d.

VALUATION OF LAND AND HOUSES.—This work will prove invaluable to Valuers and Surveyors in practice, whilst for Students and Pupils it forms a text book on a most important subject. By CHARLES E. CURTIS, F.S.L. with Valuation Tables, by D. T. DAVIES, F.S.L. and Indication, etc., by IVOR CURTIS, B.A. (Cantab).

FRANK P. WILSON, 6, St. Bride Street, London, E.C.

